8.   If Senate Bill 1 increases state funding by $1.2 billion in 1994-95 over the state aid in 1989-90, this $1.2 billion will not keep up with inflation that will occur between 1989-90 and 1994-95.   (Moak)

9.   Of the various options considered before the Legislature Senate Eill 1 shows the least change in the current system.   (DX C-2, pg. 2)

10.   Senate Bill 1 creates no real change in the funding of facilities. (Hooker, Cortez, DX E-5)

11.   According to a paper on facilities prepared by Dr. Jordan, one of Defendants' experts, the state's annual requirements will be $462.5 million for facilities and $943 million for annual debt service.   (Moak; DX E.5)

12.   The 1961 school finance legislation was actually the largest percentage increase in state aid of all Texas state finance statutes.   (Moak)

13.   Senate Bill 1 continues the inefficient system of school finance that has existed in Texas since before 1949.   (Barnes)

14.   The State's expert Dr. Jordan agreed that Senate Bill 1 will not put Texas in a position to meet the revenue disparities measure. Specifically the generally recognized revenue disparity measure as used by federal regulations and supported by Dr. Jordan, set a maximum ratio of 1.25 between the revenue per pupil of the district at the 95th percentile and the revenue per pupil of the district at the 5th percentile.   Dr. Jordan recommended that it should be the ratio of the 95th to 0 percentile which would only

make the 1.25 ratio more exacting. In Senate Bill 1 in 1990-91 at current tax rates, the ratio between the 95th percentile and the 5th percentile would be approximately 1.75; specifically the ratio of the revenue per pupil at the 95th percentile to the ratio of the revenue per pupil at the 0th percentile in Texas would be a ratio of $3,579 (revenue per weighted pupil at 95th percentile district) to $2,032 (revenue per weighted student of district at 0th percentile). This ratio is approximately 1.75, far in excess of the 1.25 which is the federal standard for the revenue disparity measure. (Jordan)

15. Dr. Berne agreed that the statistical tests would not pick up individual differences among districts within certain counties as exemplified in Plaintiffs' exhibits 261, 262, 263, 264, 265. These exhibits show some of the counties in Texas in which districts with higher taxable values and lower taxes still generate more revenue per ADA under Senate Bill 1 than do districts with lower property values and higher tax rates. (PX 259-265; Berne)

16. The decision to exclude the top 5% of wealth is not based on any aberration in the distribution of wealth in the state. In fact the real changes in wealth of the state occur at around the 98th or 99th percentile rather than at the 95th. (Moak; DX 49) (1st trial - Verstegen Report)

17. Even if Senate Bill 1 meets its goal of the 95th percentile, 15% of the state's wealth will still not be efficiently used, and if Senate Bill 1 results in equalizing at the 90th percentile, 10-20% of the wealth would not be used in the system

and a higher percentage would not be efficiently used. (Moak)

18. At the 1987 trial, Mr. Moak the state's representative in this case, testified that House Bill 72 had only $800,000,000 "other local revenue" and that "other local revenue" is "what some people would call local enrichment." (Moak)

19. Poor districts in the state of Texas are already "capped." They can raise very little revenue for their tax rates above the state system. For example Edcouch-Elsa can only raise $64 per student for any tax effort above the $1.18 guarantee level. Plano can raise $1,200 per student for that $.32 of tax effort, between $1.18 and $1.50. (Moak)

20. Senate Bill 1 does not ensure equal revenue for equal tax rate for specific districts. (Moak)

21. Insofar as individual districts are concerned, or insofar as all districts are concerned, Senate Bill 1 does not ensure the same revenue for all districts or individual districts at the exact same tax rate. (Moak)

22. Senate Bill 1 does nothing to reduce the inefficiencies caused by tax haven districts and by budget balance districts. (Moak)

23. One of the most inequitable aspects of the Texas System of school finance stems from the failure of the state to contribute any money for school facilities. (Cardenas; PX 8)

24. In 1988-89, the 214 districts with taxable wealth of less than $100,000 per pupil expended an average of $345 per student for capital outlay. The 92 districts with taxable wealth of more than

$500,000 per pupil expended an average of $852 per student for capital outlay. (PX 8, PX 1)

25. There continues to be a tremendous variety of tax rates in the state of Texas with tax rates ranging from $.17 per hundred dollars evaluation up to $1.88 per hundred dollars evaluation. (Harris; PX 108)

26. Those school districts with the lowest tax rates in the state are also high revenue districts. In general the very lowest taxing districts in the state are very wealthy districts. (Harris; PX 108)

27. There is also a tremendous variety and range of rates for interest and sinking fund tax rates (I & S) in the state of Texas with 285 school district having no I & S tax rate, and 40 districts having I & S tax rates of more than $.50 with the highest I & S rate being $.85. (Harris; PX 109)

28. The Texas school finance system, continuing in Senate Bill 1, has always put the same poor districts at a disadvantage and the same rich districts at an advantage in terms to access to similar revenues at similar tax effort. (Cardenas, Cortez, Foster)

29. In Texas in 1988-89 there were 1,055 districts. Of these, 67 had fewer than 100 students, 174 had fewer than 200 students, and 397 had fewer than 500 students. 608 districts (57.6%) had fewer than 1000 students. (Barnes; PX 240)

30. The greatest problem in school finance is the unequalized enrichment in tier three. (Barnes, Cardenas, Cortez, Hooker)

31. The present Foundation School Program process continues to subsidize inefficient extremely wealthy districts. (Barnes, Hooker, Moak)

32. The state program of school finance under Senate Bill 1 will not be sufficient to reduce drop out rates, to compete with other states or to provide sufficient educational resources to lead to higher forms of learning. (Cardenas)

33. "There can be no equalization of school finance without the neutralization of disparities in local wealth." (Cardenas; PX 6)

34. Historically the state has focused on the Foundation School Program part of the system of school finance -- the part that is least disequalizing -- and completely ignored the most disequalizing part of school finance system -- the third tier of unequalized enrichment. (Cardenas, Cortez)

35. The present school finance system forces the legislature to choose between raising the level of revenues -- which will exclude many districts from the system (i.e. make them budget balanced) or decreasing the level of revenues and including more districts within the system. This Hobson's choice would not be necessary in a system with equal tax bases because all districts would have access to the same wealth per pupil and the only issue would be the overall level of the program, with all districts having the same interest in raising or lowering the overall level of the state program. (Cortez, Cardenas, Foster)

36. In general, Senate Bill 1 is the same school finance system with additional money with a promise of a new system in later years, without the structure and limits of that promise being delineated. (Hooker, Cortez, Foster)

37. In general Senate Bill 1 has not changed the system of school finance; it is merely a band-aid. (Hooker, Cardenas, Cortez, Foster)

38. The Texas School Finance System has not changed; Senate Bill 1 does not provide for similar revenues at similar tax efforts. (Cardenas, Cortez, Hooker, Foster)

39. In general, it is the state's position that the state cannot provide an equitable system because the state has structured the system of school finance using school districts of widely varying tax bases. (Cortez, Cardenas)

B. **Unjustified Wealth Disparities And Concomitant Inequalities and Inefficiencies Remain In The Texas School Finance System.**

40. There is an incredible wealth disparity between the richest and poorest districts in Texas. The poorest district, Edcouch-Elsa, has a wealth of $14,382 per weighted student, while the richest district has a wealth of $7,712,428 per weighted student. Similarly, in terms of ADA the poorest district in the state has property wealth of $19,851 per student (Edcouch-Elsa) and the wealthiest district has property value of $11,597,636 per student. (PX 101, 208)

41.   According to the most recent information available from the TEA (June 1990) the range of wealth per pupil in Texas is from $19,851 per student to $11,597,636 per student a ratio of 584 to 1.   (PX 101; Harris)

42.   Although the very richest districts in the state are also very small districts, there are also fairly large districts in Texas at the very highest percentages of wealth.   For example Glen Rose ISD with 1170 students is at the 99.97th percentile level, and Highland Park ISD with 3836 students is at the 99.67th percentile level.   Carrolton Farmers Branch ISD, a district of 15,349, is at the 98.2th percentile level.   (PX 101)

43.   The three richest districts in the state with a total of 17 students have as much total wealth to draw on for support of their public schools as do the three poorest districts in the state with 6,419 students.   (PX 101)

44.   The state taxable property wealth of Texas is approximately $631 billion.   (PX 102)

45.   The 5% of children in the richest districts of Texas have at their disposal approximately $90 billion of the $631 billion of property in Texas.   On the other hand the 5% of children in the poorest districts have approximately $7 billion of the $631 billion of total property in the state of Texas.   The top 5% of the students have 15% of the state's property and the bottom 5% have 1% of the state's property.   The 10% of students in the wealthiest districts have 25% of the state's property and the 10% of students in the poorest districts have 3% of the states property.   (PX 102,

PX 104; Harris)

46.   Exhibit ___ to this opinion shows the 20 groups of property wealth of the state with 5% of the students in each group and the amounts of total property wealth within each group.   (PX 102)

47.   The State argues that Senate Bill 1 is designed to achieve some level of equity for 95% of students in the state. This would leave the 5% of children in the richest districts "outside the system," (Moak, Cortez, Cardenas, Foster, Hooker); however by excluding this 5%, the state does not effectively or efficiently use 15% of the state's wealth and by the state's own admission 7% of the state's wealth is completely outside the system (Moak, Cortez). In addition if the system results in a "guaranteed" equality for 90% of the students, 25% of the state's wealth would not be efficiently or equitably used and significantly more than 7% of the states wealth would be completely outside the state system.   (Moak, Cortez; PX 102)

48.   The wealth in the Glen Rose ISD and the Iraan Sheffield ISD, two districts with a combined ADA of 1,700, is as great as the wealth of the 24 poorest districts with 150,000 students; similarly, the combined wealth of Alamo Heights ISD and the Highland Park ISD, with a combined 7,300 students, has approximately the same wealth as the 150,000 students in the poorest districts; and the Carrolton Farmers Branch ISD, a district with 15,300 students, has more wealth than the entire 150,000 students in the poorest districts.   (PX 101)

49. The 5% of the state's students in the poorest districts have an average of about $45,000 property wealth per student to draw upon to support their education, while the 150,000 students in the richest districts have an average of $63.50 of property wealth per student to use to support their education; this means that on average the residents in the poorest districts can raise from local funds about $4.45 per student for each $.01 tax rate, while residents in the richest districts can raise $635.00 per student for each $.01 tax rate. (PX 101, 102)

50. The distribution of the wealth of the state in terms of the relationship between wealthiest and poorest districts has not changed significantly since 1985-86 the time of the data base for the Edgewood v. Kirby trial. (Harris; PX 104)

51. The children in the top 5% of wealth in the State have as much property value to call upon for support of their public schools as do the 33% of students in the poorest districts. (Foster)

52. The greatest cause of the inequalities existing within the school finance system which will be continued under Senate Bill 1 is the existence of inordinate concentrations of wealth in certain districts. (Foster, Cortez, Cardenas, Hooker, Moak)

C.   **Parts of The Texas School Finance System.**

53. The basic allotment in Senate Bill 1 is higher than that under House Bill 72 or Senate Bill 1019. However, the basic allotment in Senate Bill 1 will not increase as much as the rate

of inflation from the setting of the basic allotment in 1984-85 under House Bill 72. (Hooker; PX 207)

54. Salaries, which are the largest part of the total budgets for all school districts in Texas, have increased and are projected to increase a total of 80% from 1984-85 through 1994-95; thus the increase of the basic allotment from $1,350 in 85-86 to $2,128 in 94-95 will not keep pace with the increase of salaries during that time. (Hooker; PX 207)

55. In addition, the monies previously sent to districts under H.B. 72 under the educational improvement fund will no longer be used in that way but will instead be put into the basic allotment. (Hooker; PX 207)

56. Senate Bill 1 follows the Senate Bill 1019 change which does not give additional funding to school districts based on their entire costs in the second tier Guaranteed Tax Base Yield. House Bill 72 considered all costs of education in the second tier enrichment; on the other hand Senate Bill 1 does not consider ½ of the price differential index nor the career ladder or transportation when "guaranteeing" funds in the second tier of the school finance system. Although the present second tier is a different formula than the previous second tier, it is the same structure with the same intent, same purpose, and same impact on districts. (Hooker)

57. Of the $518,000,000 appropriated for the 1990-91 school year, $65,000,000 will be allocated to overcome the shortfall which would have been present under the previous school finance

legislation. $159,000,000 of the remaining $450,000,000 will be sent to districts above median property wealth. Only about $300,000,000 new state dollars will be sent to poorer districts. (Hooker, Cortez; PX 206)

58. The parts of the Texas School Finance System can be described using exhibit 11 produced by plaintiffs and explained by Dr. Cardenas. In that exhibit, part A is the Available School Fund, approximately $300 per student which is sent to every school district in Texas regardless of the district's wealth. Available School Fund monies are disequalizing because rich districts, regardless of their wealth, receive this funding. Parts B and C of exhibit 11 show the basic state and local parts of the Foundation School Program; Part B is the local share and Part C is the state share. Parts A, B and C together comprise the Foundation School Program or tier 1. (Cardenas)

59. In exhibit 11, sections D and E make up the Guaranteed Tax Base Yield system. Wealthier districts get less state aid per penny tax effort and poor districts get more state aid per penny tax effort. However, above a certain level of wealth, districts are so wealthy that they can make up the state guaranteed level and raise more per penny tax effort than can other districts under the state guarantee. In 1990-91 the Guaranteed Tax Base Yield system is set at a level of $17.90 per penny tax effort per weighted student, less than that provided in 1989-90. This will guarantee all districts in the state the same access to funds as the districts in the lower 70% of wealth. In other words, 30% of the

state's children will live in districts which have access to more funds for every penny of tax rate per weighted student than the remaining districts will have. (Cardenas)

60. Parts A, B, C, D and E of the chart of exhibit 11 are the "state program." (Cardenas)

61. The major disequalizing factor in Texas school finance in the entire history of the Texas school finance system is tier 3, unequalized enrichment. Both this Court and the Supreme Court used as examples of the inequities and inefficiencies in the school finance system the revenue raised in tier 3 the unequalized enrichment portion of Texas school finance. (Cardenas)

II.
THE SENATE BILL 1 95% STANDARD, EVEN IF MET, COMPORTS WITH NEITHER THE SUPREME COURT'S OPINIONS NOR THE TEXAS CONSTITUTION

A. Senate Bill 1 Will Continue The Historical Cycle of Inequality and Inefficiency In Texas School Finance.

62. School finance in Texas has followed a historical cyclical pattern; that pattern is one in which the state adds additional revenues to the state system in order to bring the low wealth districts up toward the wealthy districts in terms of access to revenues. The low wealth districts have never obtained the funding level of the high wealth districts, however. Then high wealth districts begin to raise their tax rates to continue the advantages that they have previously had in unequalized enrichment. This creates additional inequality and supports tax haven districts. Then poor districts must raise public attention to a

level at which the state agrees to add additional funding into the system, without hurting the wealthiest districts. Then the cycle continues. (Hooker, Cardenas, Cortez, Moak; DX A-1, p. 2)

63. There is a "loss to budget balance" of approximately $200,000,000 a year under Senate Bill 1; i.e. the wealthiest districts in the state can raise their local shares of the Foundation School Program and Guaranteed Tax Based Yield (Parts B and D of Exhibit 11), at a significantly lower tax rate than the rest of the state and therefore the wealth of these districts is not "tapped" at the same level as is the wealth of the remaining districts in the state. (Cardenas, Moak)

64. Between 1983-84 (the year before House Bill 72) and 1988-89 (two years before Senate Bill 1), the gap between the richer and poorer districts was not reduced. This is because wealthy districts have increased their local revenue more than enough to offset their loss in state revenue and therefore the richer districts (above $275,000 per student wealth) have maintained essentially the same advantages over low wealth districts as they had before House Bill 72. (Hooker, Barnes; PX 210)

65. The cyclical nature of the rise and fall of unequalized enrichment after each change in school finance system in Texas is exemplified by the following amounts of unequalized enrichment before and after major changes in Texas school finance: (1) 74-75, $264; (2) 75-76, $229; (3) 83-84, $814; (4) 84-85, $608; (5) 87-88, $722; (6) 88-89, $1,209. (Barnes; PX 241, DX 1)

66.   In terms of this cycle of inequality, Senate Bill 1 will write history into law.   (Hooker, Cardenas, Cortez, Foster)

67.   One of the causes of the cycle of increasing inequality is that as the gap decreases wealthy districts will raise their taxes in order to keep better teachers, and therefore stay above the level of the state program.   (Hooker, Cardenas, Thomas)

B.   **Senate Bill 1 Inefficiently And Inequitably Uses And Wastes The State's Resources.**

68.   In Senate Bill 1, as in Senate Bill 1019 and House Bill 72, between 60 and 100 districts are "outside the system."   These districts are so wealthy that they do not have to set their tax rate at the local fund assignment level in order to raise their entire local fund assignment.   This causes a "loss to budget balance."   (Hooker, Cardenas, Moak)

69.   This loss to budget balance will be increasing in the next five years.   Under Senate Bill 1 during the five years between 1990-91 and 1994-95 the "loss to budget balance" will add up to between $1,200,000,000 and $1,300,000,000.   (PX 235; Moak)

70.   Senate Bill 1 will continue to send monies from the Available School Fund to the very richest districts which could easily replace the lost funding with very minor changes in their tax rates.   In 1989-90, this resulted in sending $300 per student to such districts as Highland Park with over $1 million of property wealth per student.   This is a waste of the state's resources which could be used to supplement the program in poor districts. (Hooker, Cardenas)
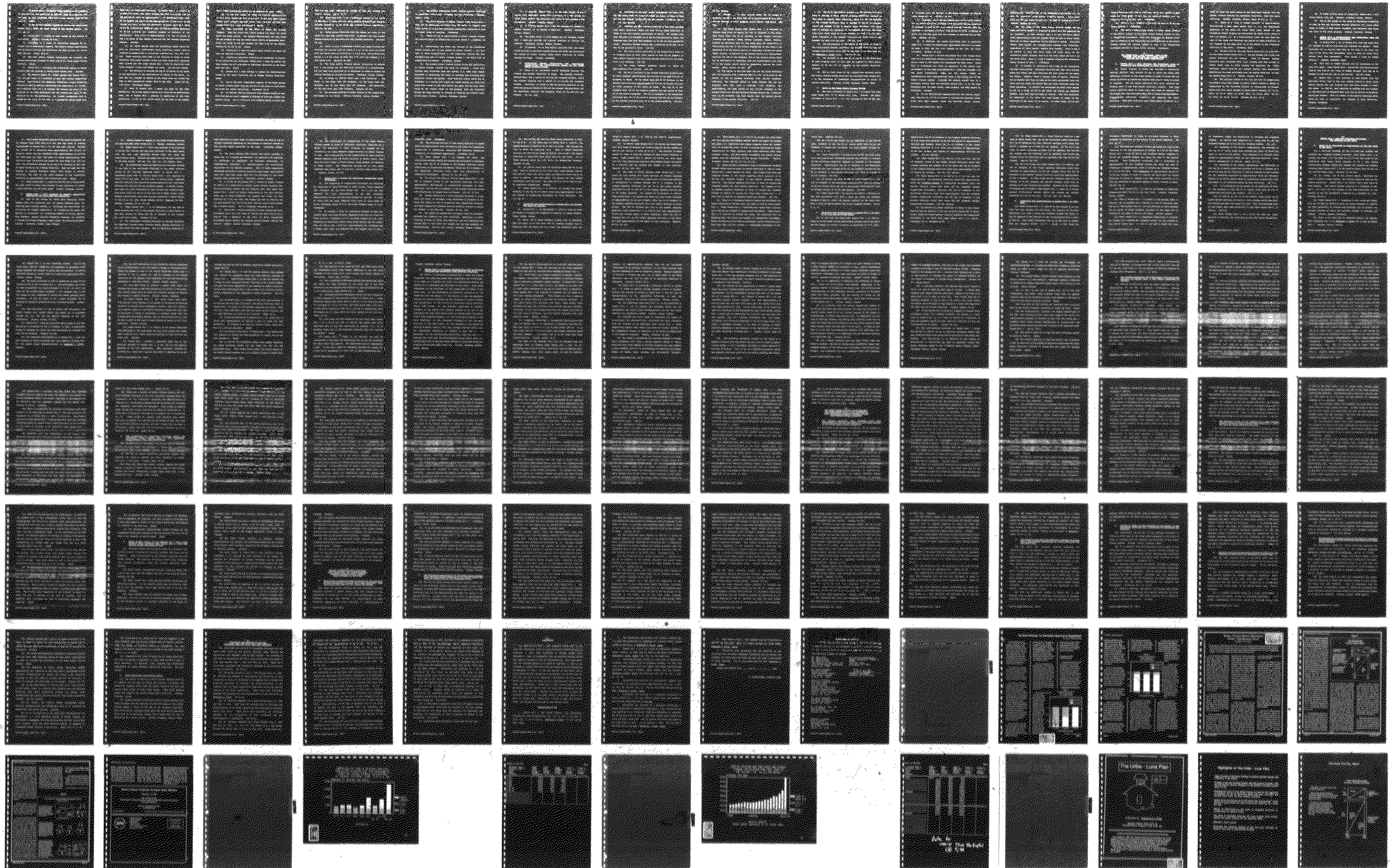
8.   If Senate Bill 1 increases state funding by $1.2 billion in 1994-95 over the state aid in 1989-90, this $1.2 billion will not keep up with inflation that will occur between 1989-90 and 1994-95.   (Moak)

9.   Of the various options considered before the Legislature Senate Bill 1 shows the least change in the current system.   (DX C-2, pg. 2)

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14.   The State's expert Dr. Jordan agreed that Senate Bill 1 will not put Texas in a position to meet the revenue disparities measure. Specifically the generally recognized revenue disparity measure as used by federal regulations and supported by Dr. Jordan, set a maximum ratio of 1.25 between the revenue per pupil of the district at the 95th percentile and the revenue per pupil of the district at the 5th percentile.   Dr. Jordan recommended that it should be the ratio of the 95th to 0 percentile which would only

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53. The basic allotment in Senate Bill 1 is higher than that under House Bill 72 or Senate Bill 1019. However, the basic allotment in Senate Bill 1 will not increase as much as the rate

of inflation from the setting of the basic allotment in 1984-85 under House Bill 72. (Hooker; PX 207)

54. Salaries, which are the largest part of the total budgets for all school districts in Texas, have increased and are projected to increase a total of 80% from 1984-85 through 1994-95; thus the increase of the basic allotment from $1,350 in 85-86 to $2,128 in 94-95 will not keep pace with the increase of salaries during that time. (Hooker; PX 207)

55. In addition, the monies previously sent to districts under H.B. 72 under the educational improvement fund will no longer be used in that way but will instead be put into the basic allotment. (Hooker; PX 207)

56. Senate Bill 1 follows the Senate Bill 1019 change which does not give additional funding to school districts based on their entire costs in the second tier Guaranteed Tax Base Yield. House Bill 72 considered all costs of education in the second tier enrichment; on the other hand Senate Bill 1 does not consider ½ of the price differential index nor the career ladder or transportation when "guaranteeing" funds in the second tier of the school finance system. Although the present second tier is a different formula than the previous second tier, it is the same structure with the same intent, same purpose, and same impact on districts. (Hooker)

57. Of the $518,000,000 appropriated for the 1990-91 school year, $65,000,000 will be allocated to overcome the shortfall which would have been present under the previous school finance

legislation. $159,000,000 of the remaining $450,000,000 will be sent to districts above median property wealth. Only about $300,000,000 new state dollars will be sent to poorer districts. (Hooker, Cortez; PX 206)

58. The parts of the Texas School Finance System can be described using exhibit 11 produced by plaintiffs and explained by Dr. Cardenas. In that exhibit, part A is the Available School Fund, approximately $300 per student which is sent to every school district in Texas regardless of the district's wealth. Available School Fund monies are disequalizing because rich districts, regardless of their wealth, receive this funding. Parts B and C of exhibit 11 show the basic state and local parts of the Foundation School Program; Part B is the local share and Part C is the state share. Parts A, B and C together comprise the Foundation School Program or tier 1. (Cardenas)

59. In exhibit 11, sections D and E make up the Guaranteed Tax Base Yield system. Wealthier districts get less state aid per penny tax effort and poor districts get more state aid per penny tax effort. However, above a certain level of wealth, districts are so wealthy that they can make up the state guaranteed level and raise more per penny tax effort than can other districts under the state guarantee. In 1990-91 the Guaranteed Tax Base Yield system is set at a level of $17.90 per penny tax effort per weighted student, less than that provided in 1989-90. This will guarantee all districts in the state the same access to funds as the districts in the lower 70% of wealth. In other words, 30% of the

state's children will live in districts which have access to more funds for every penny of tax rate per weighted student than the remaining districts will have. (Cardenas)

60. Parts A, B, C, D and E of the chart of exhibit 11 are the "state program." (Cardenas)

61. The major disequalizing factor in Texas school finance in the entire history of the Texas school finance system is tier 3, unequalized enrichment. Both this Court and the Supreme Court used as examples of the inequities and ineff iencies in the school finance system the revenue raised in tier 3 the unequalized enrichment portion of Texas school finance. (Cardenas)

II.
THE SENATE BILL 1 95% STANDARD, EVEN IF MET, COMPORTS WITH NEITHER THE SUPREME COURT'S OPINIONS NOR THE TEXAS CONSTITUTION

A. Senate Bill 1 Will Continue The Historical Cycle of Inequality and Inefficiency In Texas School Finance.

62. School finance in Texas has followed a historical cyclical pattern; that pattern is one in which the state adds additional revenues to the state system in order to bring the low wealth districts up toward the wealthy districts in terms of access to revenues. The low wealth districts have never obtained the funding level of the high wealth districts, however. Then high wealth districts begin to raise their tax rates to continue the advantages that they have previously had in unequalized enrichment. This creates additional inequality and supports tax haven districts. Then poor districts must raise public attention to a

level at which the state agrees to add additional funding into the system, without hurting the wealthiest districts. Then the cycle continues. (Hooker, Cardenas, Cortez, Moak; DX A-1, p. 2)

63. There is a "loss to budget balance" of approximately $200,000,000 a year under Senate Bill 1; i.e. the wealthiest districts in the state can raise their local shares of the Foundation School Program and Guaranteed Tax Based Yield (Parts B and D of Exhibit 11), at a significantly lower tax rate than the rest of the state and therefore the wealth of these districts is not "tapped" at the same level as is the wealth of the remaining districts in the state. (Cardenas, Moak)

64. Between 1983-84 (the year before House Bill 72) and 1988-89 (two years before Senate Bill 1), the gap between the richer and poorer districts was not reduced. This is because wealthy districts have increased their local revenue more than enough to offset their loss in state revenue and therefore the richer districts (above $275,000 per student wealth) have maintained essentially the same advantages over low wealth districts as they had before House Bill 72. (Hooker, Barnes; PX 210)

65. The cyclical nature of the rise and fall of unequalized enrichment after each change in school finance system in Texas is exemplified by the following amounts of unequalized enrichment before and after major changes in Texas school finance: (1) 74-75, $264; (2) 75-76, $229; (3) 83-84, $814; (4) 84-85, $608; (5) 87-88, $722; (6) 88-89, $1,209. (Barnes; PX 241, DX 1)

66. In terms of this cycle of inequality, Senate Bill 1 will write history into law. (Hooker, Cardenas, Cortez, Foster)

67. One of the causes of the cycle of increasing inequality is that as the gap decreases wealthy districts will raise their taxes in order to keep better teachers, and therefore stay above the level of the state program. (Hooker, Cardenas, Thomas)

B.   **Senate Bill 1 Inefficiently And Inequitably Uses And Wastes The State's Resources.**

68. In Senate Bill 1, as in Senate Bill 1019 and House Bill 72, between 60 and 100 districts are "outside the system." These districts are so wealthy that they do not have to set their tax rate at the local fund assignment level in order to raise their entire local fund assignment. This causes a "loss to budget balance." (Hooker, Cardenas, Moak)

69. This loss to budget balance will be increasing in the next five years. Under Senate Bill 1 during the five years between 1990-91 and 1994-95 the "loss to budget balance" will add up to between $1,200,000,000 and $1,300,000,000. (PX 235; Moak)

70. Senate Bill 1 will continue to send monies from the Available School Fund to the very richest districts which could easily replace the lost funding with very minor changes in their tax rates. In 1989-90, this resulted in sending $300 per student to such districts as Highland Park with over $1 million of property wealth per student. This is a waste of the state's resources which could be used to supplement the program in poor districts. (Hooker, Cardenas)

71.   The richest districts with 5% of the state's students can on average raise with only $.70 tax rate the level of funding "guaranteed" in Senate Bill 1 in its last year 1994-95.   Because the richest 5% of districts have approximately $90 billion of property wealth and can therefore raise approximately $9 million for each penny tax rate, the state is losing approximately $450 million a year ($9 million per penny tax rate times $.50 lost tax rate, the difference between $1.18 and $.70) because of the lack of equal taxing by the richest districts.   When one adds the loss because of sending Available School Fund monies to wealthy districts, the loss to the state because of the wealthiest districts is approximately $470 million per year.   (Moak)

72.   Under Senate Bill 1, almost $1,000,000,000 of state money per year could be moved from wealthy to poor districts to create a more efficient use of state funds.   (Foster, Cardenas, Cortez)

C.   **Senate Bill 1 Will Continue To Support Disparities Damaging To The State And Poor Districts.**

73. Some of the things for which poor districts cannot compete with rich districts are: (a) paying teachers more; (b) reducing pupil-teacher ratios; (c) buildings and facilities; (d) curriculum and student supervision; (e) increasing the number and quality of counselors; (f) increasing numbers of nurses, special duty teachers, special physical education teachers, (g) offering a variety of foreign languages, small class, and advance placement classes.   (Cardenas, Hooker, Boyd, Thomas)

74.   Monies needed to compete in the areas listed above have not been provided under Senate Bill 1. (Hooker, Cardenas, Foster)

75.   Under Senate Bill 1, there will continue to be a pattern of having very wealthy and very poor districts in the same county with the very rich districts having lower tax rates and significantly higher revenues per pupil than do the poor districts in the same county. (PX 101, 104, 208, 211, 212; Hooker, Moak)

76.   The differences among the districts are even more extreme if you look at the wealthiest districts in the urban counties taxing at the "maximum equalized level" of Senate Bill 1. Defendants argue that in 1994-95 Senate Bill 1 will equalize to about a $1.18 tax rate. At that rate, in Dallas County, Highland Park will have $10,978, Carrolton-Farmers-Branch $4,803, and Wilmer Hutchins will have $3,650 per weighted student. In Harris County, Deer Park will have substantially more revenue per weighted pupil than North Forest at the $1.18 tax rate and in Bexar County, Alamo Heights significantly more than the poor districts in Bexar County at the $1.18 tax rate (Alamo Heights $4,993, Edgewood $3,585). (Hooker, Cardenas; PX 13, PX 215)

77.   Under Senate Bill 1, it is impossible for the 20% of Texas students who live in the poorest districts to have access to the same revenue to which the 20% of students in the richest districts have access. (Hooker; PX 217)

78.   The additional revenues available to wealthy districts are important because these revenues enable wealthy districts to hire and retain the best teachers. This is especially damaging to

poor districts in urban areas in which teachers can work in one of several districts depending on the package of benefits offered by the various school districts in the area. (Cardenas, Thomas, Hooker)

79. The major factors that attract and retain teachers in Texas are: (1) salaries and benefits; (2) materials and supplies; (3) buildings; (4) equipment; (5) available technology; (6) supplementary materials; (7) extracurricular and cocurricular activities and (8) special programs. Each of these competitive advantages available to wealthy districts costs money; specifically they will cost more money than will be available in the state program under Senate Bill 1. (Cardenas, Hooker, Thomas)

80. A review of the Senate Bill 1 system of school finance in 1990-91 on 3 districts in Dallas county (Wilmer Hutchins ISD, Carollton-Farmers Branch ISD and Highland Park ISD) shows that Senate Bill 1 would be highly inequitable to the poor district under any of three scenarios: (a) present tax rates; (b) each district at a $.91 tax rate, the target tax rate in 1990-91; and (c) each district at a $1.70 tax rate, the tax rate of North Forest ISD in Harris County. (PX 13; Cardenas) (Attached as Ex.)

81. Senate Bill 1 allows districts to raise unequalized local enrichment above the $.91 level in 1990-91 and above the $1.18 in 1994-95 with a phase-in of the level at which unequalized enrichment begins during the interim period between 1990-91 and 1994-95. (Hooker, Foster, Cardenas, Cortez)

82. The consistency of inequalities in the Texas School finance system in terms of individual districts, districts as a whole, and districts in urban counties, is pointed out by considering the Texas Research League analysis of school finance in 1984. That study pointed to the inequalities in urban counties between Highland Park and Wilmer Hutchins in Dallas County, Deer Park and North Forest in Harris County, Alamo Heights and Edgewood in Bexar County. The disparities pointed out in that study remained after House Bill 72 and will continue under Senate Bill 1. (Barnes, Cortez, PX 239)

D. **Senate Bill 1 Allows And Encourages Unequalized Local Enrichment.**

83. The inequities of unequalized enrichment are exhibited by comparison of three districts in Bexar County, Texas: Edgewood ISD, Northeast ISD and Alamo Height ISD. For a $.01 tax rate Edgewood can raise approximately $4 per ADA, Northeast approximately $30 per ADA and Alamo Heights $5 per ADA. In order to raise $500 per pupil Edgewood would have to raise taxes of $1.25, Northeast taxes of $.17 and Alamo Heights taxes of $.10. (Cardenas)

84. To provide a drop out prevention program at $500 per student above the state program, Edgewood would have to raise its taxes by $1.25, Northeast by $.17 and Alamo Heights by $.10; this disparity is especially unfair since Alamo Heights has the lowest drop out rate of the 3 districts (approximately 4%), Northeast has a higher rate (23%) and Edgewood has the highest rate of the 3

districts (45%). (Cardenas)

85. The continued ability of high wealth districts to expend above the equalization level provided by the state will perpetuate disparities in educational resources and therefore perpetuate inequality of educational opportunity. (Cardenas; PX 6)

86. Under Senate Bill 1 at current tax rates, the relationship between wealth and unequalized enrichment is extremely strong, with the 5% of students in the poorest districts having effectively no unequalized enrichment, while the 5% of students in the wealthiest districts would have over $200,000,000 of unequalized enrichment. (Harris; PX 114, PX 116)

87. At current tax rates in 1990-91 under Senate Bill 1, the 20% of students living in the wealthiest districts will have approximately $500,000,000 of unequalized enrichment in their districts, and the 20% of students in the poorest districts would have effectively no unequalized enrichment. (PX 114, PX 116)

88. Because Senate Bill 1 would encourage districts to raise their tax rates, an extremely large percentage of students in the state are likely to live in districts with unequalized revenues, and these unequalized revenues would be directly related to wealth per student in the district. (Foster, PX 238, 222)

89. The effect of unequalized enrichment would be extremely profound and negative for poor districts, especially in urban counties in Texas in which rich districts and poor districts are located near to each other and compete for the same teachers and administrators. (PX 212, 215; Cortez, Cardenas, Thomas, Foster)

90. The average tax rate for Texas school districts in 1989-90 was $.96. In the first year of Senate Bill 1, 1990-91, the system purports to equalize up to the $.91 level. The average tax rate is above the equalized level. Even if school districts maintain the 1989-90 tax rates in 1990-91, 620 of the 1,052 school districts in Texas will have above the $.91 tax level. All of these revenues above the $.91 level are unequalized revenues. (Hooker; PX 108)

91. In 1989-90 there were 210 districts above the $1.18 tax rate. Even if districts do not raise their taxes between 1989-90 and 1990-91, there will be at least 200 districts above the $1.18 level in 1990-91. For many years, the pattern has been toward increasing local tax rates. Tax rates above $1.18 in 1984-95 will be completely unequalized. (Hooker)

92. Under Senate Bill 1 in 1990-91, at current tax effort students in the top 5% of wealth would have approximately $1,500 per student of unequalized enrichment for their education. (DX L.3, pg. 5)

E. Inequities And Inefficiencies In Senate Bill 1 At Current Tax Rates In 1990-91.

93. Senate Bill 1, as implemented in 1990-91, does not meet the State's witnesses own standards of equality in school finance. (Moak, Jordan, Berne)

94. About 15% of Texas students already live in districts that tax above $1.18 and about 60% of students already live in districts that tax above the $.91 level, the effective total tax

rates of Senate Bill 1 in 1994-95 and 1990-91 respectively. (Hooker, Cortez, Foster)

95. In 1990-91 under Senate Bill 1 at current tax rates there will be a range of revenues per student from $2,788 per student to $68,773 per student, a ratio of 25 to 1. One district in Texas spends 25 times as much per student as does another district in Texas. Under Senate Bill 1, 1990-91 at current tax rates there will be a very significant positive relationship between the wealth of a district and the revenue per student in that district. (Harris; PX 101, 102, 106)

96. The range in school revenues under Senate Bill 1 will exist not only between the lowest spending and highest spending districts. There will also be a significant and consistent pattern of differences in revenues between the 5% of students in the highest spending districts and the 5% in the lowest spending districts as well as the 20% in the highest spending and the 20% in the lowest spending. For example 5% of students in 1990-91 under Senate Bill 1 at current tax rates will have school revenues of approximately $3,000 per student, while the 5% of students in the highest spending districts will have school revenues of about $5,500. The 20% of children who live in the highest spending districts under Senate Bill 1 in 1990-91 will have approximately $4,700 per student spent on their education, while the 20% of students who live in the lowest spending districts in the state will have approximately $3,300 spent on their education. (Harris; PX 112, PX 113)

97.   Under Senate Bill 1 in 1990-91 at current tax rates there
will be a strong relationship between wealth per pupil and revenue
per pupil i.e. districts with higher property value per student
will, at current tax rates, be able to provide significantly higher
expenditures for their children than would districts with lower
property values, and this exists throughout the school finance
system from the wealthiest to the poorest districts.   (Harris,
Cardenas, Cortez; PX 111, PX 112, PX 113)

98.   There is also a tremendous range of revenues per weighted
student which would be spent in school districts in 1990-91 under
Senate Bill 1 under current tax rates. This ranges from $1902 per
weighted student in the lowest spending school district up to
$31,591 per weighted student in the highest spending school
district. The highest spending districts in terms of revenue per
weighted student are very wealthy districts.   For example of the
50 highest spending districts in terms of revenue per weighted
student in 1990-91 at current tax rates under Senate Bill 1, 34
have over $1,000,000 of property wealth per student.   (PX 115)

99.   There is a tremendous range of unequalized enrichment for
school districts at current total tax rates in 1990-91 under Senate
Bill 1. Under Senate Bill 1, districts will spend from 0 dollars
up to $58,163 per student on unequalized enrichment. Under Senate
Bill 1 in 1990-91 at current tax rates, 130 districts will be
spending more than $1000 per student in unequalized enrichment,
while 340 districts will have no enrichment and 450 districts will
have less than $100 per student in unequalized enrichment in the

third tier. (Harris; PX 116)

100. At a $1.50 tax effort for all districts in the 1994-95 year, students in the top 5% of wealth would have $4,618 per students of unequalized enrichment for every student in this 5%. (DX L.7, p. 5, 13)

101. Under Senate Bill 1 in 1990-91 at current tax rates there is a very significant difference between the revenues of students in the wealthiest districts compared to students in the poorest districts.   Specifically the 5% of students in the wealthiest districts will have average of $5,100 per students revenue and the 5% of students in the poorest districts will have an average of $3,478 revenue. (PX 106)

102. At current tax rates in 1990-91 under Senate Bill 1, the 10% of students in the wealthiest districts will have an average of $4,700 revenue while the 10% in the poorest districts will have an average revenue of $3,550 per student. (PX 106)

103. Under Senate Bill 1 at current tax effort, a district at the 95th percentile will have a yield per penny per weighted student of $36.31, while the poorest district in the state will have a yield of approximately $29.30 per weighted student. (DX M-5, p. 1)

F.   **Inequities And Inefficiencies In Senate Bill 1 In 1990-91 at $.91 And $1.70 Tax Rates.**

104. At the $.91 tax rate under Senate Bill 1 in 1990-91, there is an extremely strong relationship between wealth per pupil and the amount of revenue available to districts at $.91 level.

Specifically the 5% of students in the highest spending districts at $.91 would have revenues of $6,400 and wealth of approximately $530,000 per student, while the 5% of students in the lowest spending districts at $.91 would have revenues of approximately $3,200 per student and wealth of approximately $164,000 per student. (PX 125; Harris)

105. Under Senate Bill 1 in 1991 at a $.91 tax rate, the 20% of students living in the lowest revenue districts would have average revenues per student of $3,300 while the 20% of students in the highest spending districts would have approximately $4,700 of revenue per student. (PX 125, 126; Harris)

106. Under Senate Bill 1 in 1990-91 at a $.91 tax rate for every district, the wealthiest districts would have approximately $2000 per weighted student of unequalized enrichment while the poorest district would have about $50 per weighted student unequalized enrichment; similarly the 20% of students in the wealthiest districts would have approximately $750 per weighted student unequalized enrichment and the 20% of students in the poorest districts would have about $50 per weighted student unequalized enrichment. (PX 129; Harris)

107. An analysis of school districts in Texas if each school district had the same $1.70 tax rate of North Forest ISD in Harris County, shows the almost perfect inequity caused by the unequalized enrichment in the third tier under Senate Bill 1 in 1990-91. (Cardenas; PX 14, Attached as Ex.   )

108. If, under Senate Bill 1, every district taxed at a tax rate of North Forest ISD, one of the Plaintiffs school districts, at a $1.70 effective tax rate, district revenues would range from $3,777 a student up to $198,429 per student. At the $1.70 tax rate, 90 school districts in Texas will be spending over $10,000 per student and 350 districts will be spending over $6,000 per student while 375 districts will be spending less than $5,000 per student. (Harris; PX 118)

109. At a $1.70 tax rate under Senate Bill 1 in 1990-91, the 20% of students in the lowest spending districts would have revenues of approximately $4,400 per student while the 20% of students in the highest revenue districts would have approximately $7,500 a student. In other words 600,000 students would have an average of $4,300 revenues and 600,000 students would have an average of $7,500 revenues per student. Because of the allowance of unequalized enrichment under Senate Bill 1, there is an almost perfect relationship between wealth and revenue per student available at a $1.70 tax rate. (PX 119, 120, 121; Harris)

G. **Inequities And Inefficiencies In Senate Bill 1 In 1991-1995.**

110. Under Senate Bill 1 in 1994-95 at the minimum $1.18 tax rate (the best scenario for the state), the district at the 95th percentile will have a yield per weighted student per penny of $32.70 compared to the district at the 1st percentile with a yield of $28.66. This total difference over $1.18 tax rate of almost $500 per weighted student ((32.70 - 28.66) x 118) would be

extremely significant in terms of providing programs to those students in districts at the bottom of the wealth spectrum. (DX M-5, pg. 2)

111. The yield per weighted student per penny tax rate of the districts at the 95th percentile of wealth, at a $1.50 tax under Senate Bill 1 would be $32.26 per weighted student compared to $22.82 per weighted student per penny tax rate in the poorest district. This difference translates into a difference of approximately $11 per weighted student per penny tax rate or difference of approximately $1650 of revenue per weighted student at a $1.50 tax rate. This difference of approximately $2,200 to $3,500 per student in terms of regular ADA would give low wealth districts no chance to compete with high wealth districts or to have any efficient or equitable system of school finance in Texas. (DX M-5, pg. 2)

112. Under Senate Bill 1 in 1994-95 the system is completely unequalized above the $1.18 tax rate level. (Hooker, Cardenas, Cortez, Foster)

113. Even if Senate Bill 1 is funded at the maximum level in 1994-95, 14% of children will continue to live in districts that are not in "the system" that is, 14% will continue to have revenues far an excess of those revenues available to the other 86% of children at the same or similar tax rates. (Hooker, Foster)

114. Under Senate Bill 1, tremendous disparities in revenues per student and revenues per weighted student are not limited to the 1990-91 school year. In 1991-92 and 1992-93 there will also

be tremendous ranges and disparities in revenues per weighted student. In 1992-93 this disparity will range from $1,892 per weighted student up to $31,982 per weighted student. (PX 117)

115. According to the state's computations, the students in the top 5% of wealth would have revenues per pupil of $7370 per pupil at the $1.18 tax effort. This compares to an overall state system of approximately $4681 for the remaining districts (under state's assumptions) in 1994-95. (Moak, DX J.1)

116. According to the states computations, the districts in the top 5% of wealth would have revenues of $9,222 a student at a $1.50 tax rate for all districts in 1994-95 compared to the average for the remaining districts of approximately $5000 per student. However at $1.50 tax effort there is significant unequalized local enrichment in all districts above the poor districts. (DX J.1)

117. At a minimum $1.18 tax effort for all districts in 1994-95, the students in the top 5% of wealth would have $2,734 of unequalized enrichment per student. (DX L.5, p. 5)

118. In 1994-95 at the $1.50 tax effort, there would be an almost perfect positive correlation (.943) between wealth per pupil and revenue per pupil per penny tax rate. This relationship would be even higher than under House Bill 72 and under Senate Bill 1 in 1990-91. (DX N-2)

119. Under Senate Bill 1, at a $1.50 tax rate for every district in 1994-95, you would have at best 90% wealth neutrality. (Moak)

III.
SENATE BILL 1 DOES NOT GUARANTEE EFFICIENCY AND EQUALITY AT ANY LEVEL

A. There Is No Guarantee of Equalization At The 95% Level In Any Year.

120. A detailed analysis of the revenues per student and revenues per weighted student available under Senate Bill 1 at current tax rates, $.91 tax rate or a $1.70 tax rate leads to the conclusion that there would continue to be a very strong relationship between wealth per student and revenue per student existing under Senate Bill 1 in the 1990-91 school year as well as the 1992-93 school year. (Harris; PX 101-126)

121. Dr. Jordan, one of the state's expert, described two tests of school finance equity, the revenue disparity test and the wealth neutrality. Senate Bill 1 in 1990-91 fails both tests by wide margins. (92% wealth neutral compared to a standard of 95%; and a 1.75 ratio for the revenue at the 95th percentile to the revenue of the 5th percentile, compared to a standard of 1.25). (Jordan; DX M-3))

122. Under Senate Bill 1, taxpayers in poor districts simply will not be able to afford to have tax rates necessary to achieve the 95th percentile of revenue and certainly not to achieve the national average or above the national average of revenues per student. (Foster, Hooker, Cardenas)

123. There is no clear way to determine whether the Supreme Court standards set out in _Edgewood v. Kirby_ will be met by Senate Bill 1. (Hooker, Cortez, Foster)

124. Senate Bill 1 is not completely funded. Even in the first year, 1990-91, funds are not available to guarantee every school district the revenue to which they are entitled, if schools districts generally raised taxes up to the $.91 guaranteed level. (Foster, Hooker, Cortez)

125. The basic allotment in 1990-91 should be at least $2,100 instead of the $1,924 in Senate Bill 1. The accountable cost study in 1988 recommended the basic allotment of $1,973 for 90-91 but this was the minimum basic allotment -- the cheapest way; it was the charge of that committee to define the lowest possible basic allotment. It was not meant to be a basic allotment for an adequate or exemplary program but only a minimum program. (Hooker; DX 2)

126. From the point of view of equity and efficiency, the school finance bill became weaker and weaker as it proceeded through the 4th, 5th and 6th Special Sessions of the 71st Legislature. (Foster, Cortez; PX 236)

127. Senate Bill 1 does not guarantee equal access to the 95th percentile of revenues for 95% of students; in fact, it guarantees access to revenues for below the 82nd percentile of revenues for only 90% of students. (Foster; PX 236)

128. The purported characteristics of Senate Bill 1 that are self-renewing or self-correcting were also features of House Bill 72, the system found unconstitutional in Edgewood v. Kirby. (Foster)

129. The self-correcting or self-adjusting feature purported to be in Senate Bill 1 will not create a change in the system until after the damage is done to low wealth districts; Senate Bill 1 provides no way to remedy the loss of revenues to low wealth districts for the several years necessary for any self-correcting mechanism to come into effect. (Foster, Hooker, Cortez)

130. Even were Texas to achieve a system under which all students had access to the 95th percentile of revenue in the State, the revenue would still be below the national average of revenue per student in public schools. (Foster, Hooker, Cardenas)

131. Under Senate Bill 1, the state would save about $150,000,000 a year because of the change in the method of counting students in average daily attendance; however, this will create a very negative impact on low wealth districts because the real cost of education is based on enrollment of students rather than the average daily attendance feature, and low wealth districts will not be able to make up the loss of state funding as easily as will rich districts. (Foster, Cortez)

132. Under Senate Bill 1 in 1990-91 if all school districts took advantage of the guaranteed tax base yield system and raised their taxes to $.91, there would be shortfall of $134,000,000 the first year. (Foster)

133. Senate Bill 1 deleted a provision which was in the previous versions of Senate Bill 1 in the 3rd and 4th special sessions of the 71st Legislature. That provision, codified as 16.001(c)(3), would have required the state to equalize up to the

average tax rate for 95% of students (excluding richest districts). (Moak; DX C-6)

134. Senate Bill 1 of the 6th Special Session (the present law) reduced the projected state cost from previous versions of Senate Bill 1. Specifically Senate Bill 1 in the 4th Session had a range of state revenues from $5.3 billion to $8.3 billion during the next five years depending on tax response by school districts. On the other hand Senate Bill 1 has a range of $4.0 billion to $6.2 billion depending on tax response of school districts. (DX C-6; Moak)

135. If Senate Bill 1 is funded at the total new revenues of $4 billion over the next five years, and school districts react to Senate Bill 1 by going to the maximum equalized tax rates, there will be a total shortfall over the five years of $2.4 billion, and a 1 year shortfall in 94-95 of $1.2 billion. (Moak; PX 3)

136. During deliberations on Senate Bill 1, Dr. Kirby said it would take approximately $3 billion a year to reach the 95th percentile. If funding is at the $1.2 billion level, there will be a $1.8 billion shortfall. (Moak)

137. According to the state, in Senate Bill 1 the second tier will equalize at around the 90th percentile of wealth not at the 95th percentile. (Moak)

138. In 1991-92 the Foundation School Fund Budget Committee can adopt different levels for the "DTR" and "GL" for the guaranteed yield. This change would affect the entire equity of the school finance system, but it is clearly allowed in Senate Bill

1. (S. B. 1, Sec. 16.302(c); Moak)

139. The setting of the rates for "GL" and "DTR" would allow the Foundation School Fund Budget Committee to set the basic elements of the system which would control the overall equity of the system. (Moak, Sec. 16.302(c)

140. The significant difference between the revenue per pupil per penny tax rate available to the Plano ISD at the 95th percentile and the Edcouch-Elsa district at the 0th percentile can go on indefinitely under Senate Bill 1. (Moak)

141. Although the State Defendants did not use this "scenario" in their analysis of the potential effects of Senate Bill 1, Texas Education Agency data shows that in 1990-91 if all districts went to a minimum of a $1.18 tax rate, the state would make a 86% score on the wealth neutrality test ($1.73 billion of unequalized local enrichment out of total state and local revenue of $12 billion). (Moak; PX 32)

142. Even under the best scenarios for the state under Senate Bill 1 at a $1.18 tax rate in 1994-95 the second tier still equalizes only at the 91st percentile of revenue, i.e., 9% of students would live in the wealthier districts that are "outside the system." (Moak)

143. Senate Bill 1 viewed in its entirety can only be interpreted to mean that the Legislature has not yet set standards for years later than 1990-91. The Legislature has not implemented a plan. It has set a vague and ambiguous standard as a basis for a plan to be implemented at some time in some undetermined way.

(Hooker, Cardenas, Cortez, Foster)

B. **Senate Bill 1 Continues Disequalizing And Inefficient Practices And Exacerbates Some Existing Practices.**

144. Within the structure of Senate Bill 1 there are serious weaknesses that make the system more inequitable and inefficient, or so vague as to prevent the court from determining whether the system will be equitable and efficient in the future. Among these weaknesses are the following: (1) the unequalized enrichment in the third tier, (2) the maintenance of education funding on an "if funds are left over basis," (3) the series of vague and ambiguous phrases for setting standards and the allowance of result oriented cost projections, (4) the failure to distribute fairly Available School Fund monies, (5) the possible sunsetting of weighted students in the second tier causing funding to go out of the Guaranteed Tax Base Yield system based on average daily attendance rather than weighted students, (6) the continued allowance of tax haven districts, (7) the continued allowance of rich and poor districts in the same county, (8) the changing of the system of counting students toward a full year average counting system with its concomitant reductions in funding to poor and minority districts, (9) the hold-harmless provisions, both the 100% hold-harmless the first year and hold-harmless during future years for wealthy districts to maintain state funding to which they would not normally be entitled under state law. (Cortez, Cardenas, Hooker, Foster, Barnes)

145. For ease of interpretation the court will describe parts of the Senate Bill 1 using the Sections of the Texas Education Codes as they will be codified after amended by Senate Bill 1.

146. Senate Bill 1 has created inequality in several respects. For example, Senate Bill 1 changed the method of counting students used to determine a district's state funding. In House Bill 72 and Senate Bill 1079, this count (A.D.A.) was based on the best four of eight weeks attendance as set by the State Board of Education. Under Senate Bill 1 the counting of students will be based on a full year average attendance. This change will have a negative impact on school districts with poor and minority children. It will shift money into districts with Anglo, upper middle class children and away from districts with minority and poor children; similarly, it will shift money from high cost school districts to low cost school districts, and will punish districts with high drop-out rates. (Hooker, Cortez)

147. In general, Senate Bill 1 contemplates equalizing at some level of funding, but it is impossible to determine from the bill what that level of funding will be in years after 1990-91. It is only clear that the Foundation School Fund Budget Committee would use their judgment to set levels, but it is not clear what those levels would be. (Hooker, Cortez, PX 1)

148. Some of the revenues that will be excluded from the equalized level of funding under Senate Bill 1 are: (1) co-curricular and extra-curricular activities such as physics club, debate, Odyssey club, after school band, as well as athletic

events; (2) administrative expenses that are not considered "efficient" by an advisory committee; (3) all other revenues that are not necessary to fund an exemplary program. However exemplary is defined in neither the bill nor in other parts of the Texas Education Code but will be left to an appointed committee to determine. (Hooker, Cortez; PX 1)

149. House Bill 72 contained a structure similar to Senate Bill 1 in terms of setting various proposed levels of funding. However the setting of levels in House Bill 72 did not lead to appropriations by the legislature sufficient to meet the recommended levels by the various committees. (Hooker, Foster)

150. The committees under House Bill 72, as the committees in Senate Bill 1, can do studies and recommend levels but the legislature may ignore those recommendations and set the levels wherever the legislature wishes. (Hooker, Foster, Cortez)

151. Although the state seeks to understate the impact of cocurricular and extracurricular activities and their exclusion from the revenues to be equalized under Senate Bill 1, state regulations require that these activities be closely related to the fundamental mission of education in the state as exemplified in the essential elements. (Hooker, Cardenas; PX 205)

152. The change in procedures for counting students in average daily attendance will have a strong negative effect on school districts with large numbers of minority students and large numbers of poor students and will be advantageous to districts with higher number of middle class children and non-minority children.

(Hooker, Cortez)

153. By leaving school finance funding to an "if funds are left over basis," the legislature continues a problem it had under House Bill 72 when the original proposal was to fund education at an increasingly greater level, but later financial problems caused a breaking of this promise. (Cortez)

154. The failure of the legislature to create a system under which the school finance system would be funded at the actual level "guaranteed" will be exacerbated through each year of the system set up in Senate Bill 1. The funding of Senate Bill 1 at the "probable minimal formula funding" will cost approximately $4 billion more over the next five years than the system would have cost under Senate Bill 1019. On the other hand, if all districts take full advantage of the Guaranteed Tax Base Yield system, Senate Bill 1 would cost an additional $6.2 billion over the same five year period; this $2.2 billion difference over five years, including a $1.15 billion difference in the 94-95 year alone, will cause a tremendous decrease in the level of funding to school districts depending on the decision of the legislature to fund at the level "promised" in Senate Bill 1. (Hooker, Cortez, Moak; PX 2)

155. The proration procedure offered by the State as a method of dealing with the state's failure fully to fund its school finance system is not a procedure designed to handle deficits of billions of dollars. Even if the most equitable proration system were applied, the State would still be greatly reducing the overall

level of program available at a certain tax rate, thereby allowing a much greater number of districts to have, and an exceedingly greater number of students to attend school districts which have inordinate advantages over other districts in terms of access to similar revenues at similar tax rates. (Foster, Cortez, Moak)

156. It is impossible to determine the structure of Senate Bill 1 after the 92-93 school year because, _inter alia_ of the possible removal of weights in the second tier, the definition and implementation of the exemplary district structure to determine state and local revenues, and the setting of values by the Foundation School Fund Budget Committee, among other unclear parts of the Senate Bill 1. (Cortez, Hooker, Foster)

157. If a district with the maximum revenue per student of $5,000 per ADA which the state projects for high cost districts in 1994-95 would loose 5% of its funding because of the change in counting ADA, it would loose $250 per ADA. To compensate for this loss of $250 per student, the Edcouch-Elsa District would have to raise its taxes over $1.20 effective tax rate (which cannot be done under present Texas law that sets a $1.50 limit). To make up this $250 it would cost the Brownsville district $.50 additional tax, the San Antonio District $.25 additional tax and the Plano district $.06 additional tax. (Cortez; PX 101)

158. For a school district with very high "costs" under the state's formulas, the use of average daily attendance rather then weighted students in the second tier could mean a loss of $1250 per student. For a district with only a moderate "cost" and a moderate

number of weighted students, this use of ADA rather than weighted students could mean a loss of $500 per student in ADA. (Computed based on the assumption that a moderate cost district has a ratio of approximately 1.4 between its number of weighted students and its number of students in average daily attendance). (Cortez; PX 23, [Large Chart])

159. A very poor district like Edcouch-Elsa would require a $6.00 tax rate to make up this loss of $1,250. A fairly poor moderate cost school district would still require a tax rate of an additional $.50 to make up this loss. This change from use of weighted students to use of ADA in the second tier would reduce the equity and efficiency of the system as a whole and especially for high cost low wealth districts. (Cortez, Hooker; PX 23)

160. If the second tier is based on students in average daily attendance rather than weighted students, the second tier would only be "equalizing" up to a level of wealth of a districts of $260,000 property wealth per ADA, that is a district at only the 73rd percentile of wealth. (Cortez; PX 101)

161. The hold-harmless provision of Senate Bill 1 allows $60,000,000 in 1990-91 to go to wealthier districts rather than poor districts which would otherwise be entitled to this additional funding. This $60,000,000 is in addition to the sending of $500,000,000 to 700,000,000 per year to wealthier rather than poorer districts based on the Foundation School Program itself. (Cardenas, Cortez, Hooker, Foster)

162. Senate Bill 1 does not provide any allotments for facilities and does not provide for additional funding to districts based on their actual needs for new or improved facilities. (Cortez, Cardenas)

163. The present school finance system limits funding for the public schools to a "sum certain." Shortages require a reduction in state aid to school districts rather than a full funding of the program. (Wood, Cortez)

164. In 1977, as set out in Senate Bill 117 in the 1975 legislature, the state would transfer funds from the general revenue funds to the foundation school fund whenever a shortage in funds for the public schools occurred. (Wood)

165. From 1949 to 1987 funding for education had a priority draw in the states revenues; education no longer has this. (Wood)

166. The finding by Dr. Olivares, the Deputy Commissioner of the TEA, that extracurricular activities support and enrich the instructional programs is directly at odds with the Senate Bill 1 standard which would exclude expenditures on co-curricular and extracurricular activities from the revenues to be equalized under Senate Bill 1. (PX 24, PX 1)

167. The state's position is that the basic allotment should be $2100 in 1990-91. (Moak)

168. The state's position is that the fairest way to prorate a loss of state aid is the system of prorating based upon the local school district's ability to recoup the lost state aid through local funds. (Moak)

169. TEA projects that after 1990-91 (when a hold-harmless loss of 2% applies) an average district in the state will lose 2½% of its ADA count based on the new method of counting students in average daily attendance. (DX I.1, p. II-1)

C. **The Revenue-Generating And Purportedly Self-Correcting Sections Of Senate Bill 1 Are Vague, Ambiguous Or Unknown.**

170. Section 16.001(c)(2) sets the basic standards for the equalization to be met in Section 16.001(c)(1). Section 16.001(c)(2) clearly states, and the State has admitted, that not all revenues raised and used in the public schools of Texas will be included within the level of revenues to be "equalized" under Senate Bill 1. (Hooker, Moak, Cortez; PX 1)

171. Section 16.001(c)(2) includes, among others, the following terms which the court interprets to reveal an intent to limit revenues which will be equalized: "funds necessary," "efficient," "operation and administration," "appropriate educational programs," and "adequate" facilities and equipment. (Hooker, Cortez; PX 1)

172. Section 16.008(b)(4) will set the limit on the funds to be equalized under Senate Bill 1. This section does not include a formula for facilities; but this section does consider a debt service tax rate of local school districts as long as the district has above a $.91 maintenance and operations tax rate. (Hooker, Foster, Moak)

173. Section 16.008(d), when considered in the structure of Senate Bill 1, implies a whole new program of school finance will be implemented by the 93-94 school year. On the other hand there is no way to know what this new program will be. (Hooker, Cortez, Foster)

174. Section 16.256(d) contains the same ambiguities as do the other sections of the bill. Specifically this section, as well as other parts of Senate Bill 1, does not define appropriate program costs, determine the target for the system, determine the cost of exemplary programs, or define how these terms will be defined. (Cortez, Foster, Hooker)

175. Although the first major section of Senate Bill 1, Section 16.001(c)(1), purports to set an equalized level of the 95th percentile, that level is abandoned in Section 16.202(a)(6) of Senate Bill 1. (Hooker, Cortez, Foster)

176. Section 16.002(b) of Senate Bill 1 sets forth the considerations to be applied in the calculation of those considerations revenues in section 16.002(a)(6). Section 16.002(b) again limits those costs and revenues to those "necessary" for operation, maintenance and administration and "necessary" for "adequate" facilities and equipment and "shall exclude all other costs." (Hooker, Cortez, Foster)

177. The 95% of the 95th percentile standard of Section 16.202(a)(b) will lead to an equalized revenue at the 86th percentile rather than at the 95th percentile. This would place approximately 450,000 students in the highest wealth districts

outside the "equalized system." (Hooker, Cortez, Foster; PX)

178. The previous limitations mentioned in Senate Bill 1 are further exacerbated in Section 16.302(c) which allows the Legislative Education Board and the Foundation School Fund Budget Committee to set the limits of the system at the 90th percentile of wealth. Section 16.302(c) allows the limitation on enrichment tax rates set in Section 16.303 of the bill to be set at levels guaranteeing the 90th percentile of wealth rather than the 95th percentile of wealth.

179. One way in which Senate Bill 1 continues to send money to wealthier districts instead of poorer districts which cannot make up for the loss of state funds with local tax rates, is the "hold harmless" provision in Section 1.21 of Senate Bill 1. This would allow districts that are clearly not entitled to state funds under the new state law to continue to receive these funds while other poorer districts continue not to receive the funds to which they are entitled. At least $60 million will be misspent on hold - harmless under Senate Bill 1 in 1990-91. (Cortez; PX 3)

180. The Court cannot determine the school finance "system" set up in Senate Bill 1 since the determinants of that system are based on vague and ambiguous terms that have not yet been defined sufficiently to enable interpretation. Among these terms are "exemplary," "adequate," "co-curricular and extracurricular," "efficiency," etc. Exh. 21 outlines some of these vague and ambiguous terms and their placement within the structure of Senate Bill 1. (Cortez, Hooker, Foster; PX 21)

181. Senate Bill 1 provides that ADA rather than weighted students would be used as the basis for funding in the second tier if the Foundation School Fund Budget Committee or the Commissioner of Education does not implement weights for the second tier. Section 16.002(b). (Cortez)

182. There is a potential for exclusion of revenues from those revenues to be equalized in Senate Bill 1, and that potential for exclusion is in Senate Bill 1, Sect. 16.001(c)(2). The state's position is that Senate Bill 1 contemplates that some real revenues raised by schools to spend in their districts would not be included in the level of revenues to be equalized under Senate Bill 1. (Moak)

183. Depending upon the composition of the panels that determine revenues which would be excluded from total revenues to be used in the computations to determine Senate Bill 1 compliance with the standard in Section 106.001(c)(1), very little revenue or a great deal of revenue could be excluded from each district total revenue. (Moak; PX 34)

184. Even with a set of total revenues clearly showing a strong relationship between wealth and revenue per weighted pupil per penny tax rate as in Plaintiffs Ex. 34, a committee headed by school finance experts such as Dr. Walberg (who testified for Defendants in the original trial in 1987) could find that the Sec. 106.001(c)(2) revenues were the same for every district within the 95th percentile of districts and that there was absolutely no relationship between wealth and revenue per weighted pupil per

penny tax rate under Senate Bill 1. (Moak; PX 34)

185. There are a variety of school finance experts who will have different opinions on the state and local revenues which are "necessary" for the "efficient" operation and administration of "appropriate" educational programs and the provision for financing for "adequate" facilities and equipment. Some groups of experts might decide that school districts as listed in Plaintiffs Ex. 34 would have 16.001(c)(2) revenues as in scenario "A" on Plaintiffs Ex. 34. Other groups of experts, with opinions that school districts in general are spending far an excess of what they need for providing adequate programs and that "money does not make a difference," might find that the 16.001(c)(2) revenues are as in scenario "B" in PX 34. (Moak; PX 34)

D. The Procedures For Requiring Long-Term Equity And Efficiency Under Senate Bill 1 Are Ambiguous, Unenforceable, Slow, And Insensitive.

186. The selection of the proper statistical test to determine whether the state meets the standards of Senate Bill 1, Section 16.001(c)(1), is a value judgment. (Jordan, Berne, Cortez, Foster)

187. The use of fiscal neutrality statistics ignores what students are actually getting for their education in school districts in the state. (Jordan, Moak; PX 27)

188. There are bona fide school finance experts who would support a system of school finance with the types of wide ranging revenue and fiscal disparities allowed under House Bill 72 and Senate Bill 1019. (Hooker, Moak, Jordan)

189. Under the wealth neutrality test advanced by Defendants as one method of determining the overall fiscal neutrality of the school finance system, a school finance system could be in place that would allow over 650,000 students to live in districts spending significantly above other districts in the state at similar or lower tax rates and still meet the wealth neutrality test. (Foster; PX 237)

190. Dr. Jordan applied the wealth neutrality test to the Texas school finance under Senate Bill 1 and previous bills. (Jordan)

191. One important part of the wealth neutrality test is to determine which revenues would be included in the calculations and which would not be included. The data on which Dr. Jordan testified did not include the teacher retirement system monies approximately $800 million per year, and the text book monies, approximately $100 million per year, nor did Dr. Jordan look at any revenues of districts above the 95th percentile of wealth. (Jordan)

192. The state's expert's opinion was that when considering all districts in the state, i.e. 100% of districts, at least 90 to 95 percent of all state and local revenues must be wealth neutral. (Jordan)

193. The state's experts testified that the minimum percentage of wealth neutral revenues must be 95%, when you look only at districts in the bottom 95% of wealth. (Jordan, Moak)

194. State's expert Dr. Jordan spoke in favor of the wealth neutrality standard to be used in the Fair Chance Act, an act presently before the U.S. Congress. "The wealth neutrality standard in the Fair Chance Act would be 95% rather than 85%," according to Dr. Jordan; and Dr. Jordan testified that 95% would apply to all revenues and all districts in the state not just revenues in 95% of the districts excluding the top 5% of wealth. (Jordan; PX 27, Dr. Jordan testimony before congress on the Fair Chance Act)

195. Even when excluding the 5% of students in the wealthiest districts in the state, Senate Bill 1 would not meet the state's own standards on the wealth neutrality test in 1991. Senate Bill 1 would not meet the wealth neutrality test either with all districts at their current tax effort or with all districts at a minimum $.91 effort. (Jordan; DX M-3)

196. Dr. Jordan did not present any data regarding the "scores" on the wealth neutrality test if all districts in the state are considered, or even if 99% of districts are considered excluding the top 1% of wealthy districts. (Jordan)

197. Dr. Jordan, one of the state's experts, offered the opinion that Senate Bill 1 in 1994-95 with all districts at a $1.50 tax rate would violate the wealth neutrality standard and would be disequalized. On the other hand, Dr. Berne, another of the state's experts, stated that exactly the same data of Senate Bill 1 at $1.50 tax rate would not necessarily mean the system was disequalized but that further study and consideration of that test

as well as other statistical tests would be necessary to determine whether statisticians might recommend that Senate Bill 1 standards were violated under that scenario. (Jordan, Ward)

198. The wealth neutrality test looks only at the aggregate of all school districts and does not compare the access to revenues available to any two particular districts or any limited number of districts; nor as used by Texas does the wealth neutrality test consider the advantages available to districts above the 95th percentile of wealth. (Jordan)

199. Dr. Jordan testified that House Bill 72 would not meet any level of the federal standard of equality in school finance, either the fiscal neutrality standards of the expenditure neutrality standard; on the other hand, both Dr. Verstegen and Dr. Ward testified for Defendants in the 1987 trial that House Bill 72 did meet all the standards of school finance and produced a very equitable system of school finance. (Jordan; Tr. 1st trial, pg. 4287 (Verstegan) and pg. 7253 (Ward))

200. When looking for statistical experts who might find the Texas school finance system equitable, Dr. Berne, one of the state's experts, testified "you can find people who can say anything is equitable." (Berne)

201. Senate Bill 1 requires a group of statistical experts to recommend proper statistical measures to determine Senate Bill 1 compliance with its standard of fiscal neutrality. Section 10.203(a). However statistical experts would only recommend the proper statistical tests and would not recommend the standards on

those tests that would lead to a finding of non-compliance. (Berne)

202. When interpreting Section 16.203 of Senate Bill 1 regarding the use of those measures recommended by an impartial panel of persons expert in the use of statistics appointed by the boards, Dr. Berne testified that the statisticians would only recommend the proper tests but that further study and hearings would be necessary to determine whether any particular plan met the standards of Senate Bill 1. (Berne; PX 1, pg. 19)

203. When looking at the particular scenarios of school finance in Defendants Exhibit N-2, Dr. Berne, one of the State's experts testified that Senate Bill 1 in 1994-95 at a $1.50 tax effort would raise some questions, but he would not agree that the results of the statistical tests that he recommends show a system that would violate the 95% rule. (Berne)

204. This refusal of one of Defendants' experts to testify that Senate Bill 1 in 1994-95 at a $1.50 tax rate would violate the 95% standard, is inconsistent with the testimony of other state experts and the arguments of the state's attorney. (Jordan, Berne; DX M-3, N-2)

205. Defendants exhibits show the range of yields that are still available under Senate Bill 1, even when only looking at the 95% of children attending the poorest districts (i.e. excluding the 5% of children in the richest districts). For example the range of dollar yield per weighted student per penny tax rate is from $36.15 to $21.38 under Senate Bill 1 at the $1.18 tax effort. This

would be a difference of $1740 per weighted student between these two districts at a $1.18 tax level, a difference of an average $2500 per student. These differences are acceptable under Senate Bill 1 at the "best" tax rate for looking at Senate Bill 1 under a scenario that Defendants experts testified meets all statistical tests. (DX M-3, N-2; Berne, Jordan)

206. Defendants' expert Dr. Berne agrees that the term "statistically significant" as used in Senate Bill 1, Sec. 106.001(c)(1) is used in a policy sense rather than in a statistical sense. (Berne)

207. Defendants' expert Dr. Berne's analysis of the procedure in Senate Bill 1 is that a group of statistical experts could recommend certain measures to the Foundation School Fund Committee which could choose to use or not use those various measures. Then once the data is in, the data would be analyzed and various numbers would be produced based on those statistical measures. Then a group of statisticians would look at those numbers, study them and describe them to the Foundation School Fund Budget Committee and describe the use of those various statistical tests and the results of those statistical tests. Then the Foundation School Fund Budget Committee would make a decision to determine whether Senate Bill 1 met the standards of 106.001(c)(1). Dr. Berne agrees that the decision makers could look at these statistical tests, the standards on those tests, the testimony of statistical experts, and other matters such as the overall fiscal condition of the state, and then determine whether the actual school finance situation in

Texas violated the standards of Senate Bill 1. Then recommendations would have to be made on how to change Senate Bill 1 to bring it into compliance with its own standards. Dr. Berne further agreed that it would take significant time to gather this statistical information, analyze it, produce recommendations and get a decision from the decision makers. (Berne, Jordan, Moak)

208. Although funds for Teacher Retirement System and textbooks are certainly funds used in the provision of education in Texas, they are excluded from the analysis of wealth neutrality which the state is recommending to determine the fiscal neutrality of Senate Bill 1. (Moak)

209. As in past school finance statutes, under Senate Bill 1 policy makers would make the call whether there is too strong a relationship between wealth per pupil and revenue per pupil per penny tax rate. (Moak)

210. Regarding House Bill 72 in 1985-86, that statute which was declared unconstitutional by the Texas Supreme Court, the states expert at the first trial Dr. Verstegan testified that "I feel that generally the state system as a whole is an equitable system of school finance." (Verstegan, TR. of 1st trial, p. 4287)

211. Dr. Ward, another expert presented by the Defendants and acknowledged by Mr. Moak as a national expert in school finance, testified regarding the 1985-86 system that "Texas has managed to achieve a very high degree of equity in its school finance system." (Ward; TR. of 1st trial, p. 7253)

212. It is the state's position that no matter what level of revenue is reached in Senate Bill 1 and no matter what percentage of students are in the "equalized system," that 95% of all revenues used in districts with 95% of students, should be wealth neutral under the wealth neutrality test. (Moak)

IV.
THE TEXAS SCHOOL FINANCE SYSTEM HAS HAD, AND UNDER SENATE BILL 1 WILL CONTINUE TO HAVE, ESPECIALLY NEGATIVE EFFECTS ON POOR AND MINORITY SCHOOL DISTRICTS

A. **Low Wealth Districts Have Suffered Long Term Discrimination And Are Far Behind In All Major Aspects Of Providing Public School Education.**

213. According to TEA studies, in 1986-87, 34% of students in the state, a total of 861,969 students, attended schools with below adequate funding. (Moak; DX C-8, pg. IV-15)

214. Poor districts have suffered a history of deficits in terms of hiring or retaining teachers, building and maintaining buildings and creating an infrastructure of curriculum and professional employees. (Cardenas)

215. Unequalized enrichment will allow wealthy districts to maintain insurmountable competitive advantages over poor districts in at least the following areas: (1) hiring and maintaining teachers; (2) maintaining lower teacher-pupil ratios; (3) providing special units of support personnel; (4) providing supplementary materials to enrich the learning in classrooms; (5) supplying up-to-date equipment and supplies; (6) making available modern technologies especially full utilization of computer; (7) allowing

sufficient capital outlay to build and maintain facilities that are conducive to learning; (8) providing support for co-curricular and extracurricular activities. (Cardenas, Thomas, Boyd)

216. Districts with large numbers of migrant students will be particularly hard hit by the new definition of "students" to be used in the average daily attendance computation in Senate Bill 1. This is because so many of their students are still at work in the migrant stream during the months of September, October, April and May. After a survey of migrant school districts and consultation with the school district officials and other experts, Dr. Cortez has concluded that these migrant districts will lose about 5% of their previous ADA counts; the State has projected a statewide ADA loss of an average of 2.5% in the 90-91 school year with the Houston District losing approximately 6% of its ADA because of the new ADA counting system. Thus the 5% projected for the loss of ADA in migrant districts is a reasonable projection based on the testimony and TEA figures. The TEA projects a loss of 3% of ADA in high minority districts. (Cortez, Moak, DX I.1)

217. There is a heavy concentration of poor persons in the poorer school districts in Texas (5% of students); similarly there is a pattern of low wealth families in the poorer school districts in Texas (25% of students). (PX 105; Harris)

218. There is a significant concentration of Hispanic students in the poorest school districts in the State with 96% of the students in the poorest 5% of districts being Mexican American and 80% of students in the poorest 10% being Mexican American compared

to 30% Mexican American students in the state as whole. (DX H-2; PX 107)

219. The low wealth districts have a greater percentage of students that are "high cost" students, making revenues for these districts even more important. (Foster)

220. The problems outlined by witnesses from the San Elizario and North Forest ISD are indicative of a general pattern of lack of resources and access to funds in low wealth districts. (PX 24)

221. Dr. Ruben Olivares, Deputy Commissioner of the Texas Education Agency in charge of accreditation and school improvement has noted, after a lengthy review of accreditation reports of both poor and rich districts in Texas, that "many of the poorest school districts simply do not have the resources to meet basic instructional requirements, or to enrich their instructional program." (PX 24)

222. Items considered as basic in many school districts are often unavailable, limited, or out dated for poor school districts; regarding lack of quality, there are insufficient curriculum resources to supplement the basic curriculum in the poor school districts. (PX 24)

223. The TEA has found that "poor school districts frequently have: (1) inadequate guidance and counseling; (2) inadequate and/or limited health related services; (3) inadequate and/or community involvement in student outreach; (4) limited or absence of extra curricular activities that support and enrich the instructional program; (5) limited or absence of appropriate safety equipment;

and (6) inadequate preventive and remedial services for at risk students." (PX 24)

224. According to the TEA, poor school districts demonstrate an inability to afford, attract and retain certified personnel. Large numbers of teachers are on waivers or permits and in too many instances, substitute teachers become permanent members of the teaching staff in poor districts. (PX 24)

225. In region 1 (the valley area of Texas) which includes 38 of the state's poorest school districts, there is an annual shortage of approximately 1100 teachers and 30% of the total hardship teacher permits in the whole state are issued in region 1 alone. (PX 24)

226. In terms of the physical facilities in poor districts, observations in this area indicate a tendency to re-direct maintenance and operations money to construction programs, including classrooms, additions and non instructional facilities; this practice totally depletes fund balances and, as a result, districts are not able to provide necessary resources required by sudden enrollment growth. (PX 24)

227. There is a clear pattern of students in poor districts having significantly lower passing rates on the TEAMS test than do students in the wealthier districts. (Moak; PX 9)

228. If the school districts in Texas are broken into 10 groups of approximately 100 districts each, the poorest two gr of districts (20% of districts) passed the TEAMS at the 68% ar levels respectively and 20% of the highest wealth districts passed

at the 80% and 85% levels, respectively. (PX 9)

229. There is a very strong pattern showing that students in
the poorest districts make significantly lower SAT scores than do
students in the wealthiest districts. (Moak, PX 10)

230. For example, in the 100 poorest districts, the average
composite SAT score was 796 and in the 71 wealthiest districts it
was 910, and in the 94 districts in the 9th decile (80-90% of
wealth) the average was 909. Also, in the wealthier districts a
much higher percentage of 88-89 graduates take the SAT. (PX 10)

B.   San Elizario I.S.D. Is An Example Of A Fast Growing
      Minority District With Problems That Senate Bill 1 Will
      Not Provide Enough Resources To Cure.

231. San Elizario ISD is a district with 1430 students located
in El Paso County. 96% of the students attending the district are
from very poor minority families. The great majority of the
students are several years behind grade level in reading. The
district had a 64% increase in enrollment during the last five
years and almost all of the students are "high cost students"
requiring much higher than average cost programs for their
education. The district has the highest diphtheria and hepatitis
rates in Texas. (Boyd)

232. The San Elizario district has property wealth of $29,000
per student in 1989-90 at a $.98 tax rate and will be going up to
a $1.84 rate in the 1990-91 school year. The district recently
passed a $3,000,000 bond issue and it will now have to increase its
interest and sinking fund (I&S tax rate) to $1.23. The district

is now at its bond limit, i.e. it cannot float further bonds because it is presently indebted for 10% of the total property value of the district. The district has a value of a $39,000,000, i.e. 10% would be $3.9 million and the district is presently indebted at $3.8 million. (Boyd)

233. San Elizario, with 1,430 students, can raise only $3,900 total money for each 1 penny tax rate. In other words it will cost the district almost $.10 additional tax rate for each additional teacher along with the building, long term cost and maintenance required to support that teacher. (Boyd)

234. San Elizario cannot even offer kindergarten to all of the students for whom it has been requested and the district keeps a waiting list to enter kindergarten. The district cannot offer pre-kindergarten because it has no space or teachers to offer pre-kindergarten. (Boyd)

235. San Elizario has recently been cited by the TEA for deficiencies in the areas of science labs, libraries, lack of curriculum guides, safety equipment, lack of math supplies, and other areas. (Boyd)

236. The district cannot afford to draw up all the curricular guides it needs; it has only one lab for all of its science courses and has not been able to afford safety equipment to make its labs sufficiently safe. The district is in the process of buying more math supplies for elementary schools, but cannot presently afford to meet even state minimums in terms of library books per student or audio visual equipment per student. (Boyd)

237. Even with the waiting list for kindergarten, the district can afford only a ½ day kindergarten rather than the full day kindergarten; the district's students need prekindergarten and kindergarten more than most students because they enter the school with educational disadvantages which require more intensive, long term, and more professional help. At the beginning of the year 1990-91, the district expects 160 children to request kindergarten, but has room for only 110; this 110 will be educated in only ½ day kindergarten in classes that are larger than the 22-1 ratio required under state law. (Boyd)

238. At the high school level, the district has only one set of courses, the general track, and cannot offer courses for academic or academic with honors degrees that are more likely to lead to college. Only about three or four of the district's 50 graduating seniors each year go on to college. (Boyd)

239. The San Elizario district has recently raised its teacher salaries but cannot compete since other surrounding districts have raised their teacher salaries as well. The district presently has 22% its teachers on emergency permit or certificate, i.e. these teachers are not fully certified to teach the courses which they are teaching. This is mainly caused by teacher turn-over which in turn has been caused by lack of salary increases over the long term. The average years experience in the district is about 5.9 years and this is because of the lack of salaries, lack of benefits, poor buildings and lack of sufficient equipment and supplies. (Boyd)

240. In general, the lack of ability to compete for teachers, lack of equipment and supplies, and lack of quality buildings has a very real negative effect on the future educational development of children in the district. (Boyd)

241. The educational disadvantages caused children by the inadequate educational program at the San Elizario ISD will not be able to be remedied in future years. (Boyd)

C. **North Forest I.S.D. Is An Example Of A Poor Urban District With Problems That Senate Bill 1 Will Not Provide Enough Resources To Cure.**

242. The North Forest ISD in Harris county is a district with 12,000 students including 97% minority students (89% black and 8% Hispanic). Eighty-five percent of the students come from very low wealth families. The district is mainly a blue collar community with private residential areas and limited industrial base. (Thomas)

243. North Forest, the poorest district in Harris County, has a $1.70 tax rate, the 3rd highest tax rate in the state of Texas. (Thomas; PX 108)

244. North Forest has a very serious problem attracting and retaining teachers. In the 1989-90 school year the district lost 146 of its 700 teachers, and a year before lost 70 of its 700 teachers. (Thomas)

245. These teachers left the district for higher pay in other districts. The lack of ability to attract teachers is exacerbated by the shrinking market of teachers sensitive to the needs of

extremely high concentration minority districts such as North Forest. (Thomas)

246. North Forest has done a survey of surrounding districts in Harris County and it offers 2,000 to 4,000 a year lower -- beginning salary than do the surrounding districts; these lower salary levels exist at the higher experience levels as well. (Thomas)

247. The North Forest district is actually training administrators and teachers for surrounding districts who recruit North Forest's best teachers, especially the extremely limited pool of minority teachers. (Thomas)

248. North Forest is faced with a very difficult choice. Sometimes it is required to hold teachers to the August 1st deadline for termination of teacher contracts; but by holding teachers to this deadline it creates dissatisfied teachers who have requested but been refused the ability to transfer to other districts. (Thomas)

249. North Forest ISD had 50 teachers on emergency permit last year and still had to fill in with permanent substitutes in many classes. (Thomas)

250. North Forest is supposed to get 4.5 million dollars in new money under Senate Bill 1; this will barely make up for the loss of state aid in the previous year; it is not a windfall and is not enough to make up the budget cuts. Because of budget cuts in previous years the district was required to reduce salaries and close some schools. The district only has a ½ day kindergarten

program. (Thomas)

251. As long as surrounding districts are able to raise their teacher salaries and outspend the North Forest district, more of the district's permanent teachers will leave and the district will be required to hire more temporary teachers, have larger classes and give less individual attention to students, and will have more problems with its buildings and structures. (Thomas)

252. The problems at the North Forest district will cause students educational deficits which will not be able to be remedied in future years. (Thomas)

253. As a plaintiff in the litigation, the North Forest ISD wants an equitable and efficient system that will allow North Forest to compete with all the other districts in the state and will be sensitive to the high educational needs of its students. (Thomas)

V.
SEVERAL ALTRENATIVE MORE EFFICIENT, MORE EQUALIZING, LESS DISCRIMINATORY, PRACTICAL PLANS OF SCHOOL FINANCE WERE PRESENTED TO THE COURT

A.   **Many Better Alternatives Were Presented To, But Rejected By The Legislature In Favor Of A Less Efficient, Less Equalizing Plan That Did Not Change The System.**

254. There are several possible and more efficient and more equitable systems of school finance than that created by the legislature in Senate Bill 1: (1) full state funding with no local taxation; (2) tax base sharing; (3) consolidation of some districts, especially tax haven districts; (4) redistricting of

districts; (5) unlimited guaranteed yield; (6) extending existing limitations on revenues; (7) applying a limitation on revenues to any of the existing options including Senate Bill 1. (Cardenas, Hooker, Cortez, Moak)

255. In general both the Uribe/Luna and the Masters' plan with additional funds are more efficient and equitable alternative school finance plans than Senate Bill 1 for the same state cost. (Cortez, Cardenas; PX 29, PX 30)

256. One alternative measure of fiscal capacity of a school district would be to use family income as well as property wealth in determining the ability of school districts to raise school revenues. (Moak)

257. In earlier special session of the 71st legislature, bills have been passed by the House which would have come closer to guaranteeing access to wealth for 95% of student at the 95th percentile of wealth. These bills had more objective standards which might be more verifiable and enforceable. (Hooker, Foster)

B. **The Efficiency And Equality Of The Texas School Finance Plan Could Be Greatly Enhanced By The Use Of County Tax Bases As Exemplified By The Uribe/Luna Bills.**

258. The use of county taxing units would greatly reduce the ratio of the wealthiest taxing unit to the poorest taxing unit. Presently in Texas this ratio is approximately 600 to 1, i.e. the wealthiest district has approximately 600 times the wealth of the poorest district. At the county level the ratio is approximately 60 to 1, i.e. the wealthiest county has approximately 60 times the

wealth of the poorest county. A county tax base system will allow the state to capture the taxing ability of the richest districts; in general the lower the ratio between the wealthiest and poorest districts, the more equity you can achieve for the same amount of state funding. (Hooker, Cortez, Cardenas, Moak)

259. Senator Hector Uribe and Representative Greg Luna introduced a bill into the special sessions of the legislature in Spring 1990. This bill was described as the Uribe/Luna plan and introduced into evidence as Plaintiffs Ex. 16. The plan creates county taxing districts and assigns the local share of the Foundation School Program to counties at an $.80 local tax level. County local shares are then combined with state Foundation School Program payments and distributed to school districts based upon their total Foundation School Program costs. Districts are then allowed to raise their taxes on an individual district level an additional $.20 with these amounts guaranteed by the state through a Guaranteed Tax Base Yield System. Districts are not allowed to tax above a $1.00 effective tax rate except to service existing debt obligations. (Cortez; PX 16, PX 17)

260. The Uribe/Luna Plan makes full use of Available School Fund payments that are not equalized under Senate Bill 1. The Uribe/Luna plan also equalizes both within counties and between counties and creates an efficient and equitable school finance system. At the $.80 tax level every school district in Texas would have the same revenues per weighted student (except the 1/2 of 1% of children who live in "budget balanced counties"). (Cortez,

Cardenas; PX 16, PX 17)

261. The Uribe/Luna Plan creates a system of school finance with exactly the same access to funding for 100% of students in the State of Texas; it provides that perfectly equal access to funds at tax rates that are exactly the same for 99.5% of the students in Texas. (Cortez; PX 17)

262. The Uribe/Luna plan creates, in 1992-93, a system of complete equality for every student in the state of Texas. The Court is particularly impressed by Plaintiffs Exh. 17 especially the comparison of current funding and funding proposed under the Uribe/Luna plan in 1992 showing poor and rich districts with the same revenues per ADA at the $5000 level. (Attached as Ex.)

263. The Uribe/Luna plan, unlike Senate Bill 1, includes the top 5% of students in the richest districts and allows those students the same access to funds as all other students in Texas and no more. (Cortez, PX 17)

264. The state agrees that the Uribe/Luna plan creates an equitable distribution of state funds for all students in Texas. (Moak, Cortez, Cardenas; PX 29, PX 30)

265. For example, in a TEA print out comparison of the Uribe/Luna plan to four other plans before the senate, including Senate Bill 31 (a precursor of Senate Bill 1), the Uribe/Luna plan produced the same total revenues for each of the ten groups of 105 districts in the state; all of the other plans produced significantly greater revenues for the 9th and 10th groups (80th to 100th percentile of wealth) of 10% of districts than for the

other districts in the state of Texas. Mr. Moak, the state's representative, agreed that the Uribe/Luna plan produced the more equitable distribution of revenues of any of the plans before the senate at that time. Each of the plans was modeled with the same new state revenues of $600 million. (Moak, Cortez; PX 29, PX 30)

266. The Uribe/Luna bill included a specific allotment for facilities broken down into four parts: (1) basic allotment, (2) a debt service allotment; (3) a growth rate allotment, and (4) an age of classroom allotment. This system, unlike Senate Bill 1, would be responsive to the different costs of obtaining and maintaining facilities in various districts around the state.

267. A series of comprehensive studies of the organization and efficiency of the Texas school finance system has been made and has recommended reorganization of school districts along county lines, except in large urban areas. (Barnes; COPSE Reports, PX 240)

268. The Texas Research League, a organization of manufacturing, business and banking interests, has recommended a county local fund assignment in order to increase the efficiency of the Texas school finance system. (Barnes; PX 241)

269. The Texas Research League proposal to increase the efficiency of Texas school finance by the use of a county local fund assignment includes these elements: (1) enrichment funds would be incorporated into the foundation program for equalization; (2) better equalization and an improved tax base for most school districts would be achieved by assigning the local fund assignment

to the county rather than to each school district; (3) local school districts, with voter approval, could levy limited additional taxes for enrichment and debt service. (Barnes; PX 241)

270. According to the Texas Research League, the use of the county local fund assignment would have the following consequences: (1) in Pecos County, Iraan Sheffield, an extremely wealthy district would increase its tax rate from 18.2 cents to 22.8 cents but Fort Stockton ISD could reduce its taxes from 88 to 34.8 cents; (2) in Dallas County, Highland Park would have to raise its tax rate from 55.3 cents to 69.1 cents, but Lancaster or Wilmer Hutchins ISD could reduce their taxes from above a $1.00 to 88.7 cents; (3) in Kleburg County, Laureles ISD would raise its taxes from 33.8 cents to 64.8 cents and the funds raised from Laureles and Santa Gertudis districts could be used to supplement funding available to Kingsville ISD. (Barnes; PX 241)

271. Several county wide taxing districts have been created to supplement school districts in the various counties. This includes Dallas, Harris, Rusk Counties and a multi-county area in South Texas. (Barnes; PX 244)

272. Using county tax bases instead of school district tax bases for raising the local fund assignment is a more rational procedure; among other things property tax administration is based on county boundaries and county boundaries have a long consistent history in the Texas Constitution. (Barnes, Cortez)

273. Assigning the Local Fund Assignment to counties rather than districts has a long history in Texas; it was the system used

up until 1976. (Barnes)

274. The state's expert, Dr. Jordan, also recommended the advantages of multi-district taxing authorities and regional taxing units in order to "achieve equality in local tax rates and available fiscal resources;" Dr. Jordan also agreed that regional taxing authorities would not reduce local control. (Jordan)

275. Dr. Jordan agrees that using tax base consolidation would greatly reduce the disparity in wealth in school districts in Texas and the effects of those disparities on school finance system. (Jordan)

276. The Texas Education Agency through Mr. Moak and Dr. Kirby recommended to the State Board of Education that Texas implement a system of setting the local fund assignment at the county rather than at the district level, i.e. using county tax bases. (Moak; PX 31)

277. The Uribe/Luna bill was projected to cost $400,000,000 during the first year of implementation. (Moak; PX 28)

278. Comparing the various bills before the Senate in March 1990, the Uribe/Luna bill was the most equitable in terms of revenues available to districts of all property wealth. (Moak; PX 30)

279. The Texas Education Agency recommended the county tax base system to the State Board of Education because the county tax base system is a more equitable and efficient way to use the state's resources in school finance. (Moak)

280. The county tax base system was described in a Texas Education Agency document as "an improvement in school finance equity and efficiency through the property tax system." Mr. Moak and Mr. Walker wrote a paper in 1988 which described the county tax base system as one with "potential for development of a more equitable system of school finance as envisioned in Edgewood." (Moak; DX C-1 p. 10)

C. **The Master's Plan With The Additional Funding Of Senate Bill 1 And Revenue Limitations Is A More Efficient And Equitable Plan.**

281. The Court also reviewed evidence regarding the implementation of the Masters' plan as filed with this court on June 1, 1990 with the additional revenue in 1990-91 which was appropriated in Senate Bill 1. This legislation was filed in the Texas House of Representatives in the 6th Called Session in June 1990, before the passage of Senate Bill 1. (PX 19; Cortez)

282. The Masters' Plan with the additional funding of Senate Bill 1 accomplishes several goals: (1) with no additional funding (i.e. without the additional $518,000,000 of Senate Bill 1) the plan created revenues for low wealth districts by moving state monies from high wealth districts to low wealth higher taxing districts. An additional $540,000,000 was "produced" in this manner. (Masters' Report; Cortez)

283. With the additional funding in Senate Bill 1, the Masters' plan produced a more equitable distribution of revenues than does Senate Bill 1 in 1990-91; this is true when, as in the

Masters' plan as filed by Rep. Luna as House Bill 45 a limitation of expenditures of 10% above the state program is set. (Cortez; PX 19)

D. **Placing A Limit On The Revenues On Tax Rates Of The Wealthiest Districts Will Contribute To Efficiency And Equality.**

284. Limitations can be set on the revenues available to districts under each of the other plans presented to the Court in order to increase both the equality and efficiency of the school finance system. (Hooker, Cortez, Cardenas, Moak)

285. It is doubtful that the legislature will be able to find sufficient state funds in order to equalize revenues between low and high wealth school districts without imposing some limitation on the amount of unequalized enrichment funds available to high wealth school districts. (Cardenas; PX 7)

286. Hearings conducted by the Masters indicated a consensus on the need to address unequalized enrichment through limitations on district enrichment spending. Such an opinion was voiced for attorneys by the Plaintiffs, attorneys for the Plaintiff-Intervenors, attorneys for the Defendants, the Texas Commissioner of Education and the Deputy Commissioner for Research and Development. (Cardenas; PX 7, p. 14-15)

287. Indiana, Kentucky, New Mexico, and Arizona have placed some limitations on the revenues that wealthy districts can raise to spend on their programs, when those revenues are in excess of the state's guaranteed program. (Jordan)

288. In a paper written by Mr. Moak and Dr. Jordan, state's experts, and used as an exhibit by Defendants, the following statement was made: "revision in Texas state system of financing schools should include the following: . . . 3. to promote equal equity, reduce the range of expenditures among local school districts by (a) requiring increased expenditure in the low spending school districts and limiting the expenditure in the highest spending districts; and (b) including the concept of recapture with expenditure limits to address inequities in spending per pupil related to variation in wealth per student." (Moak; DX C-8, p. II-6)

E. **Several Alternatives Have Been Produced To Respond To The Problems Of Facilities Not Addressed In Senate Bill 1.**

289. The most feasible means of providing state aid for facilities on an equalized basis is the inclusion of the facilities entitlement in the Foundation School Program. (PX 8; Cardenas, Foster)

290. An analysis of expenditures on school facilities and on debt service payments per student suggest a Foundation School Program entitlement of at least $400 per pupil for school construction and debt service, with a flexibility to accommodate districts with unique needs, in the 1988-89 school year. (PX 8; Cardenas)

291. A funding allotment based on a basic entitlement, a growth rate entitlement, an age of classrooms entitlement, and a bonded indebtedness entitlement should be included within the

Foundation School Program, the Guaranteed Tax Base Yield, and any level of total program dollars in the Texas school finance system. (Cardenas, Cortez; PX 8, PX 17)

292. In 1949 the Gilmer Aiken Committee which recommended the creation of the Foundation of School Program, also recommended that cost of facilities "should be included in a minimum foundation program of education." (PX 239; Barnes)

F.   **Reorganization of School District Tax Bases Or Districts Would Contribute To The Efficiency And Equality Of Texas School Finance.**

293. The state's expert Dr. Jordan testified regarding his chapter of a book he co-authored in 1972 regarding _Financing Education, Fiscal and Legal Alternatives._ (PX 26, 27; Jordan)

294. In that article, Dr. Jordan, the state's expert, called local control a myth and school districts a creature of the state. Dr. Jordan recommended a graduating class of no less than 100 students and generally recommended a minimum of 10,000 students in a district in order to provide an adequate program to students. (PX 26; Jordan)

295. The COPSE Report in 1968 also recommended that school districts should be at least 2600 students unless an entire county has fewer than 2600 students.   This is consistent with the recommendation of Defendants' expert Dr. Jordan who recommends that school districts should be large enough to allow graduating classes of at least 100 students.   (Barnes, Jordan; COPSE Report)

296. Indiana reduced from 1,000 to 300 school districts in six years in order to reduce the wide disparities of wealth and to reduce the wide observable differences in quality of education in districts. (Jordan)

297. The states representative continues to associate himself with and agree that something should be done about consolidation in order to increase the efficiency of the Texas School finance system. (Moak)

298. The Committee on Public School Education (COPSE) appointed by Gov. Connally in the late 1960's recommended school district reorganization to reduce the almost 6,000 districts existing at that time down to between 300 and 400 districts in order to increase the efficiency of the system. (Barnes; PX 240)

299. In the COPSE Report in 1968 as well as in 1988 profiles of SAT scores, there is a pattern that students from the smallest districts with small graduating classes are making lower standardized test scores than are students from larger graduating classes. (PX 240; Barnes)

300. Dr. Jordan, the state's expert recommended school district reorganization and recommended that it is justified on educational and fiscal grounds. (Jordan)

301. It is the position of the state that "the potential for development of a more equitable system of school finance, as envisioned in Edgewood, and more particularly one that relies upon local property taxes and local decision making, is hampered by inadequate school district organization. (Moak; DX C-1, p. 10)

302. According to Dr. Walker and Mr. Moak the judgment of the Court dictates that the finance program must be fiscally neutral, "that the system of districts should be reorganized, and that support for capital expenditures be included in the state program." (DX C-1, p. 16; Moak)

303. Compared to the level of state aid for larger districts, the state is paying a supplement of about $200 million a year to small districts. In addition, local taxpayers pay significant supplements for these fiscally inefficient districts. (PX 240; Barnes)

G.   Other Reasonable Alternatives Exist.

304. One method to equalize school finance funding would be to redefine the tax base by taking out minerals, utilities, and commercial property value from the school district tax base and taxing those values in some other manner. This would greatly reduce the range of tax wealth among school districts. (Hooker, Cardenas, Cortez)

305. Another possible alternative school finance system which would increase both the equality and the efficiency of the school finance system in Texas is the use of the recapture provision. Under this system, revenues raised above the level set by the state would have to be partially shared with a state pool for use in equalizing the overall system. (Hooker, Cardenas, Cortez, Moak)

VI.
PLAINTIFFS ARE ENTITLED TO ALL THE
ATTORNEYS FEES AND COSTS THEY HAVE REQUESTED

306. Plaintiffs are entitled to reasonable attorneys fees and costs under taken by the Mexican American Legal Defense and Educational Fund (MALDEF), and the META Project. Mr. Kauffman is entitled to compensation for 555.5 hours of attorney time spent on this case between July 7, 1989 and July 20, 1990. These 555.5 hours were reasonably and necessarily expended in the prosecution of this litigation. (PX 40-41)

307. During the period of July 7, 1990 through April 16, 1990, Mr. Kauffman was engaged in representing the Plaintiffs in this litigation in terms of responding to the Supreme Court argument and preparing materials to consider the constitutionality of any remedies that the Texas Legislature might pass during the special session of the Texas Legislature. These hours were reasonably expended and necessary for the representation of the Plaintiffs in Edgewood v. Kirby. (PX 40-41)

308. Mr. Kauffman expended 119.5 hours between April 22, 1990 and June 3, 1990. This time was devoted both to reviewing the proposed plans of the Texas Legislature and preparing for hearings before this Court. These hours were reasonably and necessary expended for the prosecution of this litigation and the representation of Plaintiffs. (PX 40-41)

309. Mr. Kauffman expended 252.5 hours between June 4, 1990 and July 20, 1990, i.e. from the time Senate Bill 1 was passed through the second week of trial on this case. These hours were

reasonably and necessary expended for the prosecution of this litigation and the representation of Plaintiffs. (PX 40-41)

310. The Defendants State of Texas, et. al., and the Plaintiffs and Plaintiff-Intervenors have stipulated that $175.00 an hour is a reasonable fee for the prosecution of this litigation. At this rate, Mr. Kauffman is entitled to a fee of $96,337.50 for attorneys hours spent between July 7, 1989 and July 20, 1990. (PX 40, 42, 42)

311. The Court finds that the preparation of findings of fact and conclusion of law and post trial briefing in this case will require the reasonable and necessary expenditure of an additional 150 hours of attorneys time at $175.00 an hour and that Plaintiffs are entitled to a fee of $26,250.00 for attorney time after July 20, 1990 up through the final judgment of this Court. (PX 45)

312. The Court further finds that if this case is appealed directly to the Supreme Court that a reasonable and necessary attorneys' fee and costs for that part of the litigation will be $75,000 up through the final argument and decision of Texas Supreme Court. Alternatively, if the case is appealed first to the Court of Appeals and then to the Supreme Court the reasonable and necessary fee would be $90,000 from the time of the final judgment of this Court up through the final argument and opinion of the Texas Supreme Court. (PX 45)

313. The Plaintiffs are also entitled to reasonable necessary expenses in this litigation as follows: (a) paralegal fees at 160.5 hours at $35.00, $5,617.17; (b) expenses of litigation from July

7, 1989 through July 1, 1990, $35,538.71; (c) expenses billed after July 1, 1990, $3,000; (d) additional fees to experts of $20,566.84 for the services of experts who testified at this trial, Dr. Cardenas, Dr. Cortez and Dr. Harris; (e) recent trial expenses of Mr. Kauffman and paralegal Mr. Sanchez, $3,120.00 for a total of expenses of $67,842.72. (PX 40, 41, 42, 43, 44, 45, 46, 47)

314. Plaintiffs are also entitled to a reasonable fee for the attorneys work and expenses by Mr. Roger Rice and Mr. Peter Roos of the META Project. Plaintiffs are entitled to a fee of $14,192.50 for 81.1 hours of attorneys time spent on this litigation by Mr. Rice, and $7,787.50 for 44.5 hours of time spent on this case by Mr. Roos at $175.00 and are also entitled to $2,028.84 for expenses of Mr. Rice and Mr. Roos. (PX 48, 49)

315. In sum, if this case if prosecuted directly to the Supreme Court, aintiffs would be entitled to a total of $289,439.06 for attorneys fees, costs and expenses in this litigation and this fee is reasonable and necessary for prosecution of this litigation. (PX 40-49)

316. If this case is appealed to the Court of Appeals and then to the Supreme Court, Plaintiffs are entitled to fees and expenses of $304,439.06, and these fees and expenses are reasonable and necessary for prosecution of this litigation on behalf of the Plaintiffs. (PX 40-49)

317. Plaintiffs have prevailed in this part of the case.

VII.
CONCLUSION

318. This Court's June 1, 1987 Judgement stated that "in the event the legislature enacts a constitutionally sufficient plan by September 1, 1989, this injunction is further stayed until September 1, 1990, in recognition that any modified funding system may require a period of time for implementation. This requirement that the modified system be in place by September 1, 1990 is not intended to require that said modified system be fully implemented by September 1, 1990." It was the opinion of this Court that a fully constitutional system had to be enacted into law but that the plan did not have to be completely implemented the first year. Senate Bill 1 does not enact a fully constitutional statute with later implementation. Senate Bill 1 does nothing more than set parameters for the 1990-91 year and leave the development of the plan for future years. Because the 1990-91 fails to meet the standards agreed to by the State itself, and because there is no plan for future year, Senate Bill 1 fails to meet this Court's order, as affirmed and modified by the Supreme Court.

CONCLUSIONS OF LAW

1. Senate Bill 1, 6th Called Session, 71st Legislature violates the Texas Constitution, art. VII, §1, art. I, §3, art. I, §3(a), art. I, §§ 19 and 29. Edgewood v. Kirby, 777 S.W. 2d 391 (Tex. 1989).

2.   The Legislature and Governor have failed in Senate Bill 1 to meet the Constitutional standards for a public school finance system as set forth in Edgewood v. Kirby, supra.

3.   Senate Bill 1 will not create an "efficient" system of school finance, as that term is used in the Texas constitution. Edgewood v. Kirby, supra; art. VII, §1, Tex.Const.Ann.

4.   Guaranteeing equal access to a set level of educational revenues, even revenues for an exemplary program, for less than 100% of Texas students does not comport with Texas Constitutional standards of school finance, equal rights, and due process. Edgewood v. Kirby, supra, Tex.Const.Ann. art. VII, §1, art. I, §§3, 3a, 19, 29.

5.   Plaintiffs are entitled to a Declaratory Judgment that Senate Bill 1 is unconstitutional under Tex.Const.Ann. art. I, §§3, 3a, 19 & 29; and art. VII, §1. Tex.Civ.Prac.&Rem.Code §37.001 et seq.; Edgewood v. Kirby, supra.

6.   Plaintiffs are entitled to a temporary injunction to enjoin Senate Bill 1 for the 1990-91 school year, 2nd semester. Tex.Civ.Prac.&Rem.Code §65.011 et seq.

7.   Plaintiffs are entitled to a permanent injunction to enjoin Senate Bill 1 beginning on September 1, 1991; Plaintiffs are also entitled to an injunction requiring Defendants to implement the Uribe/Luna plan in 1991-92 and later school years unless the state can pass a plan with equal or greater efficiency and equality and prove that to this Court by January 1, 1991. Tex.Civ.Prac.& Rem.Code §65.011 et seq.; Edgewood v. Kirby, supra.

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8.   This Court's June 1, 1987 Judgment and any injunction to granted by this Court apply to "local" as well as state funds. Edgewood v. Kirby, supra.

9.   Plaintiffs have prevailed and are entitled to all attorneys fees and costs requested; Defendants are not immune from Judgment for these fees and costs and must pay them as delineated in these findings.   Tex.Civ.Prac.&Rem.Code §37.009; Edgewood v. Kirby, supra.

SIGNED and ENTERED this _____ day of _____, 1990.

_____
F. SCOTT McCOWN, DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy by Federal Express of the foregoing Plaintiffs' Proposed Findings of Fact and Conclusions of Law on this __13th__ day of August, 1990 to the following counsel of record:

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Tax Base Sharing: An Affordable Approach to Equalization

by *José A. Cárdenas, Ed.D.*

The Texas Supreme Court decision in *Edgewood v. Kirby* requires the Legislature of the State of Texas to develop an alternative plan for financing the system of public schools. The court order specifically states, "The Texas school financing system ... as implemented in conjunction with local school districts containing unequal taxable property wealth, is unconstitutional ..."

The implications of this portion of the court order is that the function of a remedy or an alternative system is to eliminate the effects of the unequal taxable property wealth found among the various school districts in Texas.

This objective can be easily reached by a variety of options available to the Texas Legislature. Eliminating existing school districts, eliminating the taxing powers of school districts, funding education solely with State funds, and prohibiting local expenditures above the level of the Foundation School Program are various options, each meeting the court's mandate. Eliminating inequities in the present system through any of these options is so simple that the options tend to be simplistic. Unfortunately, each of the options may bring about undesirable side effects and eliminate desirable characteristics in the present system of education.

Many of the undesirable side effects of the options cited above can be prevented by an alternative option available to the Texas Legislature, the creation of intermediate taxing entities for tax base

sharing purposes. This approach combines a number of school districts of differing wealth <u>for taxing purposes only</u>. A provision for creating unitary taxing entities has existed in Texas law as a permissive process; the wealth neutralization mandate of the court case suggests its implementation as a mandatory process.

One way of designing a tax sharing system is to use counties as intermediary units. Under such a plan, the local share of the cost of the Foundation School Program could be assigned to the county as a whole, rather than to the individual school districts in the county as it is currently done. The difference between what the county taxable wealth generates at a set tax rate and the cost of the Foundation School Program will be provided by the State.

This concept of local and state shares based on wealth has been on wealth has been the backbone of the Foundation School Program since its inception, though the basis of local wealth has always been the individual school district. Expanding the size of the tax base to a county level, or even a larger intermediate unit produces two basic advantages: the narrowing of the range of wealth through larger units diminishes the cost of equalization to the

State, and high wealth currently going almost untaxed in some school districts would be shared for taxation with low wealth in poorer school districts.

Examples of County Tax Base Sharing

The following figures provide an illustration of the two basic advantages. In a hypothetical example there are three independent school districts in a county, each with the same number of students, and with large disparities in taxable wealth. One is a poor school district with a tax base of $30,000 per pupil in average daily attendance (Market Value per Average Daily Attendance MV/ADA), the second is a

Figure 1
Foundation School Program
Cost of State Share
No Tax Base Sharing

Legend: State 1520, Local 1680

X-axis: A 30,000   B 200,000   C 800,000
Local Wealth Per Pupil
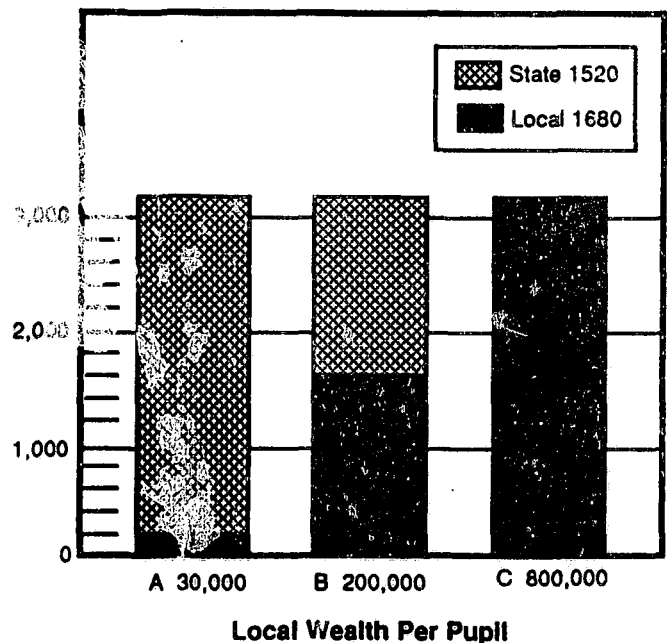
medium wealth district with $200,000 in taxable wealth per pupil, and the third is a high wealth district with a tax base of $800,000 per pupil. Let us further assume that each of the three school districts is operating a program costing $3,200 per pupil which is to be raised by a maximum tax rate of $0.80 per $100 valuation with the difference being contributed by the state's equalization program.

District A raises $240 per pupil with the .80 tax rate requiring the state to contribute $2,960 to produce the guaranteed amount of $3,200. District B raises $1,600 per pupil requiring an equal state contribution of $1,600. District C is so wealthy that the $3,200 is raised with a .40 tax rate, and no state contribution is required.

The average cost of the state's share of the $3,200 guarantee for the three districts is $1,520 per pupil ($2,960 + $1,600 +0 divided by three), with the districts, average cost being $1,680.

Under a tax sharing plan in which the wealth of the whole county were used for determining the local share of the foundation school program, the state cost of equalization would be substantially diminished. Figure 2 illustrates the effect of the tax base sharing on the same three hypothetical districts used in Figure 1.

The sharing of the tax bases for the three school districts would produce an average tax base of about $343,333 for each of the school districts. At the same tax

rate of .80, each of the districts would raise $2,747 in local taxes in support of the foundation school program, with the state having to provide $453 per pupil in each of the three districts.

Figure 2
Foundation School Program
Cost of State Share
With Tax Base Sharing

Local Wealth Per Pupil
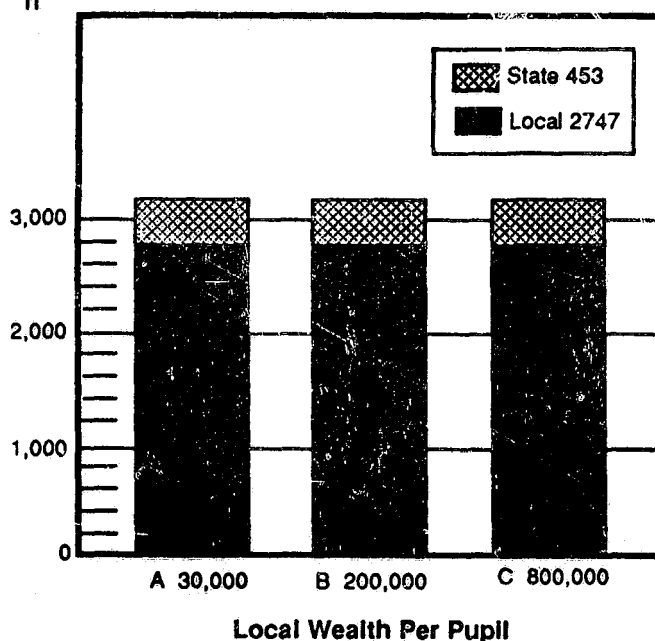
A comparison of the foundation school program cost without tax base sharing and with the sharing of tax base indicates a saving to the state of $1,067 per pupil in the implementation of the equalization feature. Needless to say, the saving to the state would come from local taxes on property in high wealth school districts which is not currently being collected. The high wealth school district would have to collect an .80 tax rate, rather than the .40 rate being used prior to the sharing of the tax base.

A county-wide tax base sharing plan would not produce as high a savings to the state of Texas as in the hypothetical example, mostly because high wealth school districts tend to have much smaller enrollments than low wealth school districts, though the savings to the state would still be substantial.

In Bexar County which has very low property values with only one very wealthy school district (budget balanced), the annual savings to the state in using a county-wide tax sharing plan would total $5,226,940. In a county such as Dallas with 51,716 students in very wealthy districts, the sharing of the tax base would save the state of Texas $82 million in annual equalization costs.

Much of the concern expressed following the Supreme Court decision in *Edgewood v. Kirby* has centered around the increased state cost of equalization. A substantial amount of the increased cost is based on the premise that the state is willing to pick up all the increase and not inconvenience high wealth districts not currently carrying a fair share of the tax load. The use of an intermediary unit for tax base sharing would lead to sharing the local wealth and diminishing the state share. ◊

SCHOOL FINANCE EQUITY PROPONENTS UNVEIL "THE EQUALITY PLAN"

by *Albert Cortez, Ph. D.*

On December 5, 1989, State Senator Hector Uribe of Brownsville and Representative Gregory Luna of San Antonio held a press conference in Austin to announce the filing of a comprehensive school finance reform bill designed to address the major issues raised in the Supreme Court's decision in Edgewood v. Kirby. This article highlights the major features of the proposal.

In a recent news conference held at the Texas State Capitol, State Senator Hector Uribe and State Representative Gregory Luna announced the filing of a comprehensive school finance reform plan which they felt addressed the major constitutional issues raised in the Texas Supreme Court decision which declared the existing system unconstitutional. Known as "The Equality Plan," the proposal incorporates sweeping changes in the manner in which the state determines the amount of state funding to be provided to individual school systems.

In its October 2nd ruling, the Texas Supreme Court concluded that "the Texas school funding system... as implemented in conjunction with school districts containing unequal taxable property wealth is unconstitutional under Article VII, Section 1 of the Texas Constitution."

Review of the Supreme Court decision reveals that the justices concluded that the vast disparities in the local property tax bases of the state's 1,0.. school systems was the primary cause of large differences in education funding available to children around the state. In their opinion, the court observed that "There are glaring disparities in the abilities of various school districts to raise revenues from property tax bases because property wealth varies from district to district... Because of the disparities in property wealth, spending per student varies widely, ranging from $2,112 to $19,333." The Equality Plan attempts to address this fundamental problem-vast differences in local district tax bases-by using the **combined tax bases of whole counties** to determine the amount of state aid to be provided to a local area. By using a county tax base sharing plan, the wealth disparities of individual districts in that county are neutralized, thus addressing the fundamental cause for the inequalities criticized in the court's decision.

Under The Equality Plan the state would calculate the county's Foundation School Program (FSP) costs by totaling the combined FSP's for districts located within the county. All school systems would be required to levy a tax of 80¢ per $100 valuation of property. The combined revenues from the 80¢ county tax would then be pooled to form the county's share of the county Foundation School Program. The difference between the county's total FSP cost, and the revenues generated from the 80¢

county tax constitute the county's state aid entitlement.

Though the Supreme Court took notice of the need to upgrade and equalize the state's basic educational program, the decision also stated that local school districts could choose to enrich the program so as to provide for more than a basic education. They did note, however, that "there must be a direct and close correlation between a district's tax effort and the educational resources available to it . . ." According to the Court, "districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort." To provide some degree of local control, the Equality Plan allows **individual school districts to increase their local taxes above the 80¢ county rate in order to supplement the state's basic program.**

In revisions incorporated into the 1989 education finance bill, the Legislature changed the enrichment equalization component from a set equalized amount per student, to a system which was tied to a district's tax effort above the amount required to fund the basic program. Known as a "Guaranteed Yield" approach,

Figure 1

this system is designed to equalize the amount of money obtained by a school district for each penny of tax effort it exerts up to a level of tax effort specified by the Legislature. In a guaranteed yield approach, the district raises what it can from its own local tax base and the state makes up the difference between what the district tax generates and the amount which is guaranteed by the state for that tax effort. (See Figure 1.) The Equality Plan maintains the guaranteed yield portion of the current system, but increases the amount of money that is guaranteed for that every one cent of tax effort. Under The Equality Plan the Guaranteed Yield per each cent of enrichment tax effort is increased from the current $18.25 to $35 per ADA ($25 per weighted student) in 1990-91. The Guaranteed Yield portion of the plan is subsequently increased from $25 per weighted student in 1990-91, to $40 in 1991-92 and $50 in the 1992-93 school year. Using a Guaranteed Yield approach as the second tier or level in the system, the Equality Plan allows local districts to exercise local control in selecting their own levels of enrichment, with the return for the extra effort equalized by the state.

A long-standing problem in the Texas school funding scene was the state's ongoing need to pour ever-increasing amounts of state funding into the system as the levels of unequalized enrichment increased over time. Lacking any effective mechanisms to maintain equity in expenditures, the Legis-

TWO TIER EQUALIZED SCHOOL FINANCE SYSTEM

The Equality Plan uses a two tier (level) approach.

The bottom tier (Foundation Program) uses the property tax bases of whole counties as the measure of property wealth which is used to determine state aid. This concept is called tax base sharing.

The top tier allows individual districts to raise additional revenues based on extra individual district tax effort.

lature found itself on a treadmill where it was forever increasing the level of equalization aid in its pursuit of greater equality in expenditures among property-poor and property-rich school systems in the state. In The Equality Plan, the maximum level of revenues are fixed in statute; school systems are allowed to raise a maximum of approximately $4,800 per student beginning in 1992-93. To cushion the impact of these provisions however, all districts spending above the specified levels are allowed to maintain their current levels for the next two school years. The proposal also makes allowances in order to recognize existing bonded debt. Under the plan, if a school district's existing debt service requires them to raise additional money to pay off bonds, they are provided exceptions to allow them to meet their obligations.
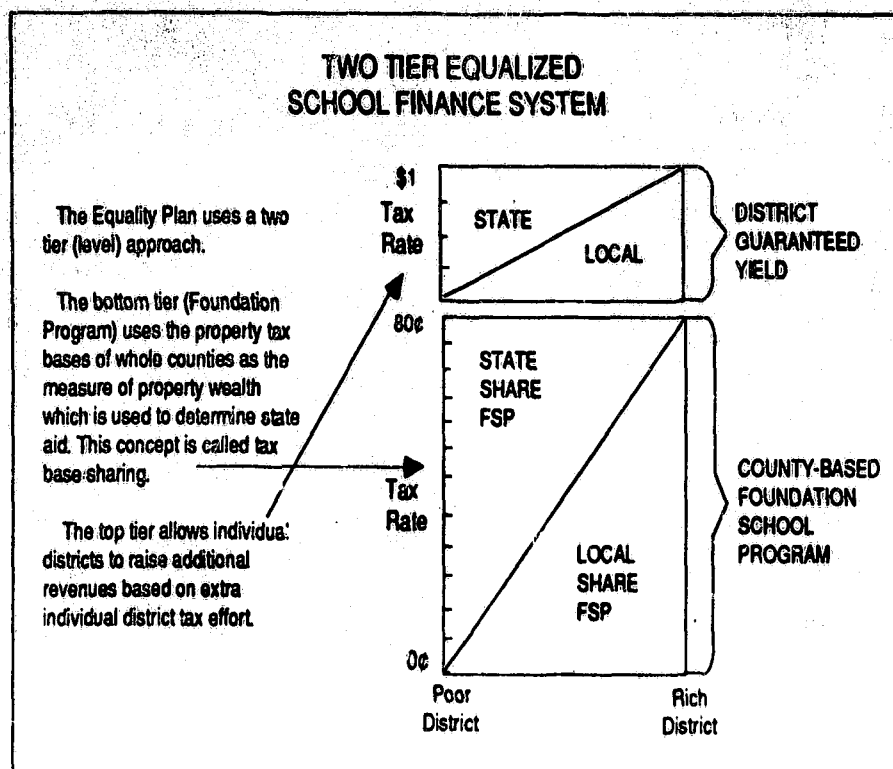
One of the Court's observations focused on the state's lack of direct funding for school facilities. The Equality Plan incorporates state-local funding for school facilities by providing a facilities allotment equal to 10% of a district's total FSP costs in the 1990-91 school year. In subsequent years, the plan calls for the use of a four-part formula which includes a basic facilities allotment, plus additional funding based on growth in enrollment, average age of classrooms and existing bonded indebtedness.

While never stating it directly, the Court did register concerns regarding the level of funding of the state's basic program noting "The [current] Foundation School Program does not even cover the

cost of meeting state-mandated requirements . . . the basic allotment and transportation allotment under-state actual costs, and the career ladder is under-funded." The Equality Plan addresses these concerns by providing a significant "leveling up" of the Foundation Program by increasing the level of the program from the current $6 billion in combined state and local revenues to $10 billion by 1992-93. Total new state costs for levelling up the program are estimated at $800 million in 1990-91, $1.8 billion in 1991-92, and $2.5 billion in 1992-93.

Based on IDRA reviews of all plans which have been presented to date, we conclude that The Equality Plan, taken as a package, provides the greatest degree of equity at the lowest cost to the state.

Its use of county tax base sharing neutralizes most district wealth disparities while capitalizing on the existing tax bases available in the state's 254 counties. The Guaranteed Yield portion addresses concerns regarding local control by providing local districts the option to supplement the program, while equalizing the return for tax effort for all who choose to enrich. The plan also incorporates provisions to maintain equity over time, thus minimizing the potential need for continued Court oversight of the system. By maintaining every district at similar levels of expenditure per student, it also creates a common interest among all districts in obtaining state support for quality education for all students in the
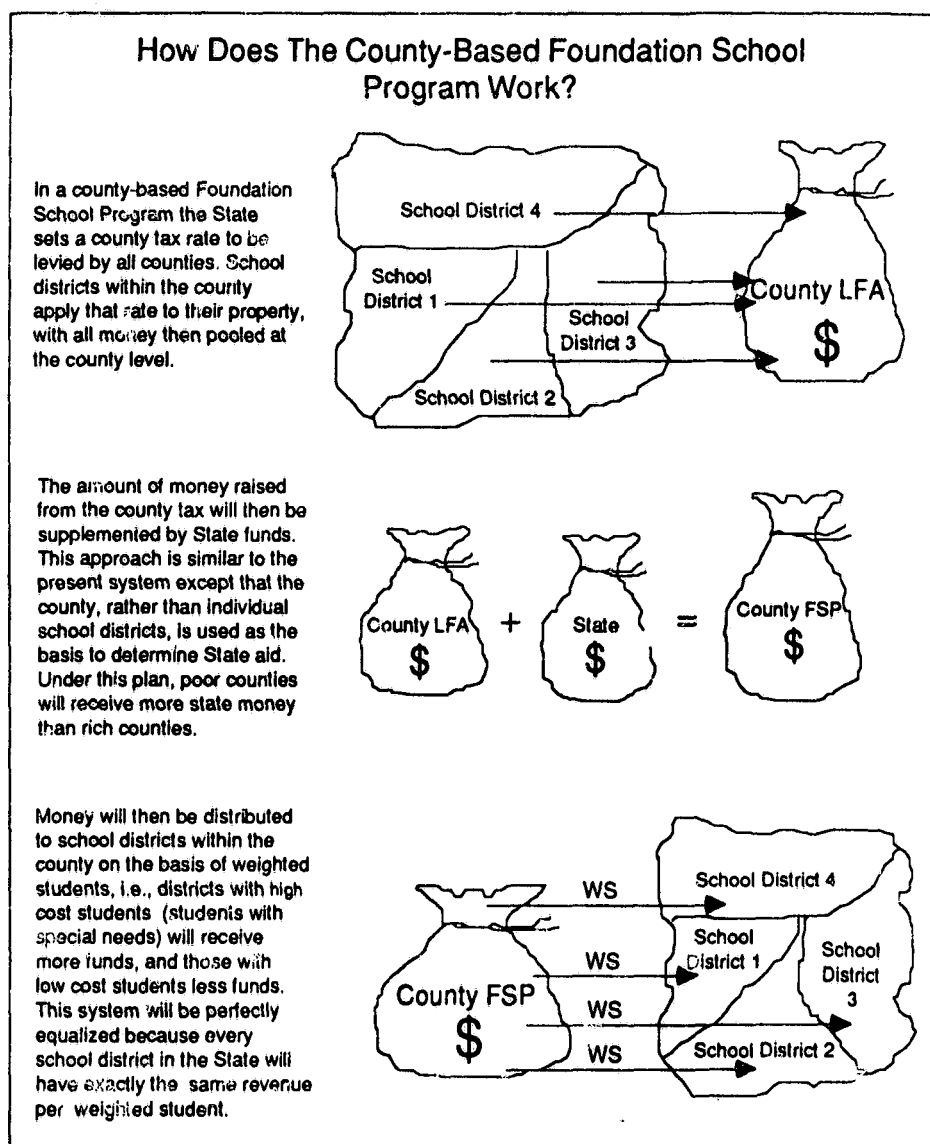
state. The long-standing need for state involvement in funding facilities is also addressed with the funding formula tied to an array of relevant factors which are sensitive to district histories and existing need. Developed in consultation with plaintiff districts, attorneys, and national and state experts in the field of school finance, The Equality Plan is the only plan thus far proposed

which is perceived as **fully meeting** the Supreme Court's edict. (See Figure 2.)

All other proposals (with the exception of the Texas Research League Plan) call for the state to assume the bulk of the costs for improving the level of equity in the

Figure 2

How Does The County-Based Foundation School Program Work?

In a county-based Foundation School Program the State sets a county tax rate to be levied by all counties. School districts within the county apply that rate to their property, with all money then pooled at the county level.

The amount of money raised from the county tax will then be supplemented by State funds. This approach is similar to the present system except that the county, rather than individual school districts, is used as the basis to determine State aid. Under this plan, poor counties will receive more state money than rich counties.

Money will then be distributed to school districts within the county on the basis of weighted students, i.e., districts with high cost students (students with special needs) will receive more funds, and those with low cost students less funds. This system will be perfectly equalized because every school district in the State will have exactly the same revenue per weighted student.

system. Unfortunately, only The Equality Plan and the TRL Plan effectively deal with the basic issues raised in the court suit, i.e. the great disparities in local tax bases, with all others allowing the continuation of the unequalized tax bases and related unequalized local enrichment which was the primary problem attacked in the court suit. Given the education communities historic role in the creation of the current unconstitutional system, it seems unlikely that strong support for major reforms will emerge from those camps. For those more concerned with achieving equity as opposed to simply spending more state money to perpetuate the state's fundamentally flawed funding scheme, The Equality Plan provides not just another band-aid for an ailing and antiquated funding system—but an opportunity to achieve real and long-needed reform. ◊

Schoool Finance Conference for School Board Members

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San Antonio, Texas

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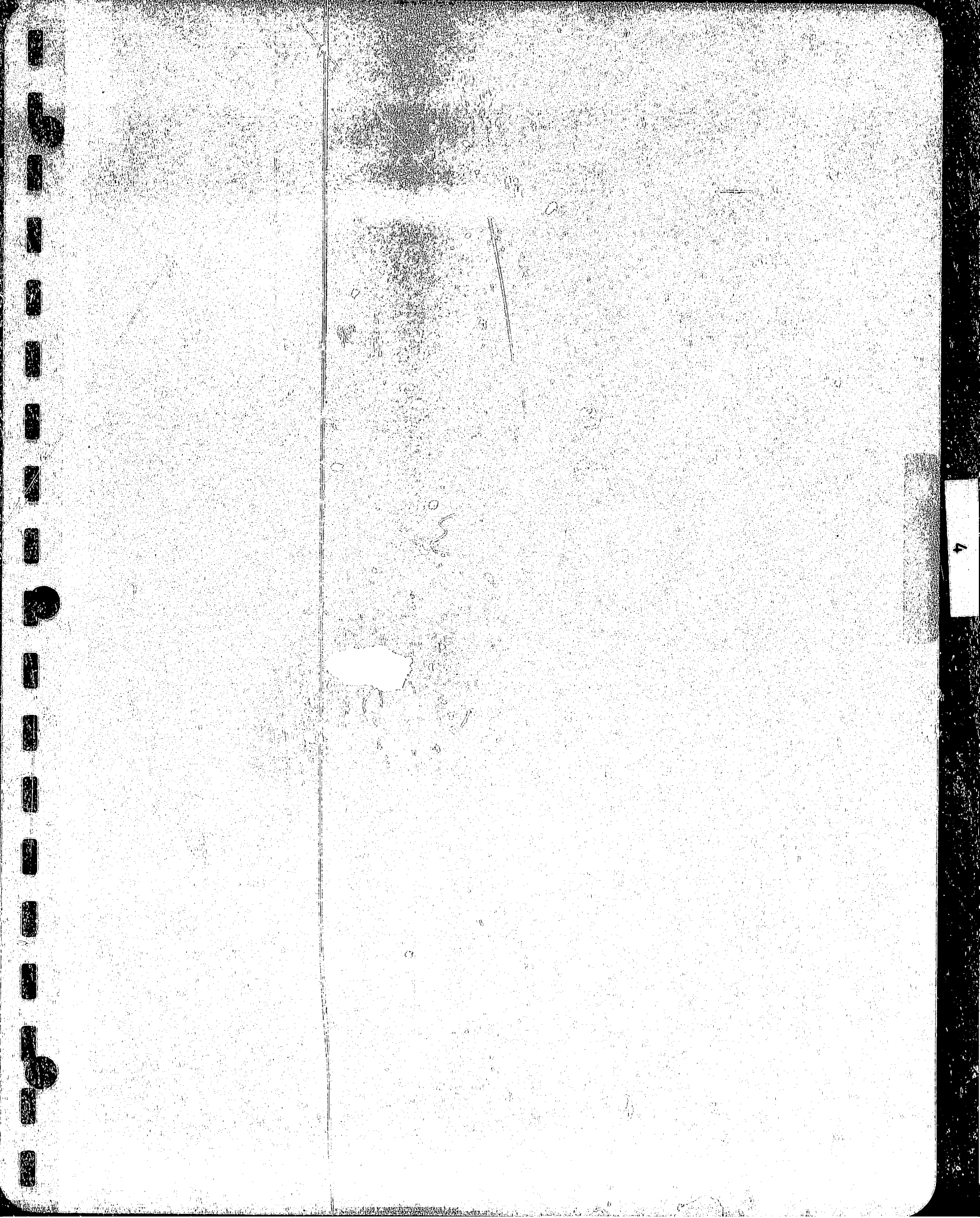

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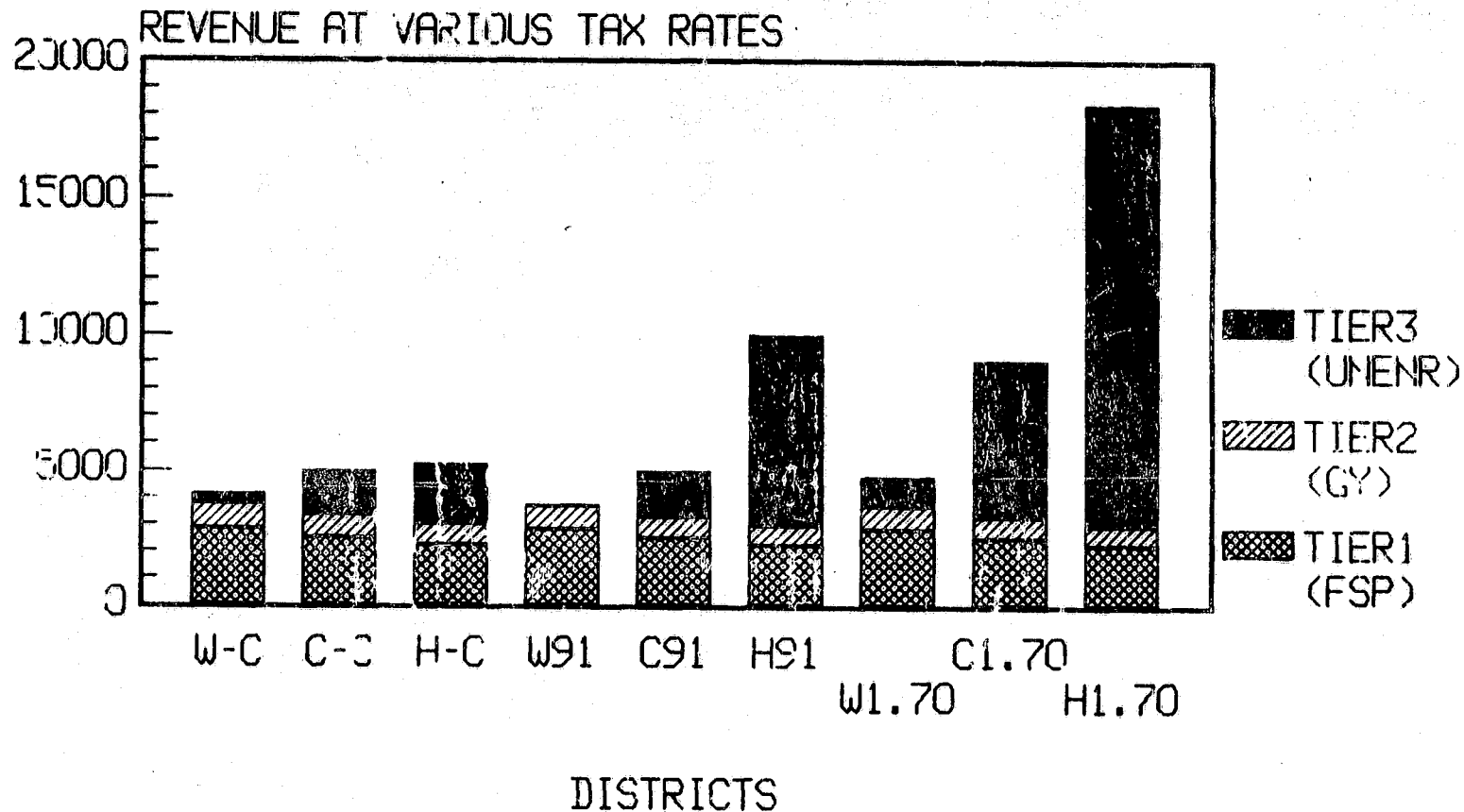San Antonio, TX 78228

IDRA

COMPARISON OF 1990-91 REVENUES PER ADA
FOR WILMER-HUTCHINS, CFB, AND HIGHLAND PK
UNDER NEW SCHOOL FINANCE LEGISLATION
AT VARIOUS TAX RATES (CURR, 0.91 & 1.70)

REVENUE AT VARIOUS TAX RATES

DISTRICTS

13

Graph-in-the-Box

Data

	Variable text 1 Variable text 2 Color Type Pattern	TIER1 (FSP) COLOR 2 COLUMN XXXXXXXXX	TIER2 (GY) COLOR 3 COLUMN //////////	TIER3 (UNENR) COLOR 4 COLUMN ··········	Graph D ---------- COLOR 5 COLUMN X X X X X	Graph E ---------- COLOR 6 COLUMN / / / / /
1	W-C	2792	939	377		
2	C-C	2490	815	1661		
3	H-C	2234	728	2263		
4	W91	2793	837	67		
5	C91	2490	763	1741		
6	H91	2234	704	7047		
7	W1.70	2793	837	1164		
8	C1.70	2490	763	5790		
9	H1.70	2234	704	15434		
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1990-91 REVENUE PER ADA UNDER NEW SCHOOL FINANCE LEGISLATION FOR EACH TIER IN THE SYSTEM - AT $1.70 TAX RATES

REVENUE PER ADA
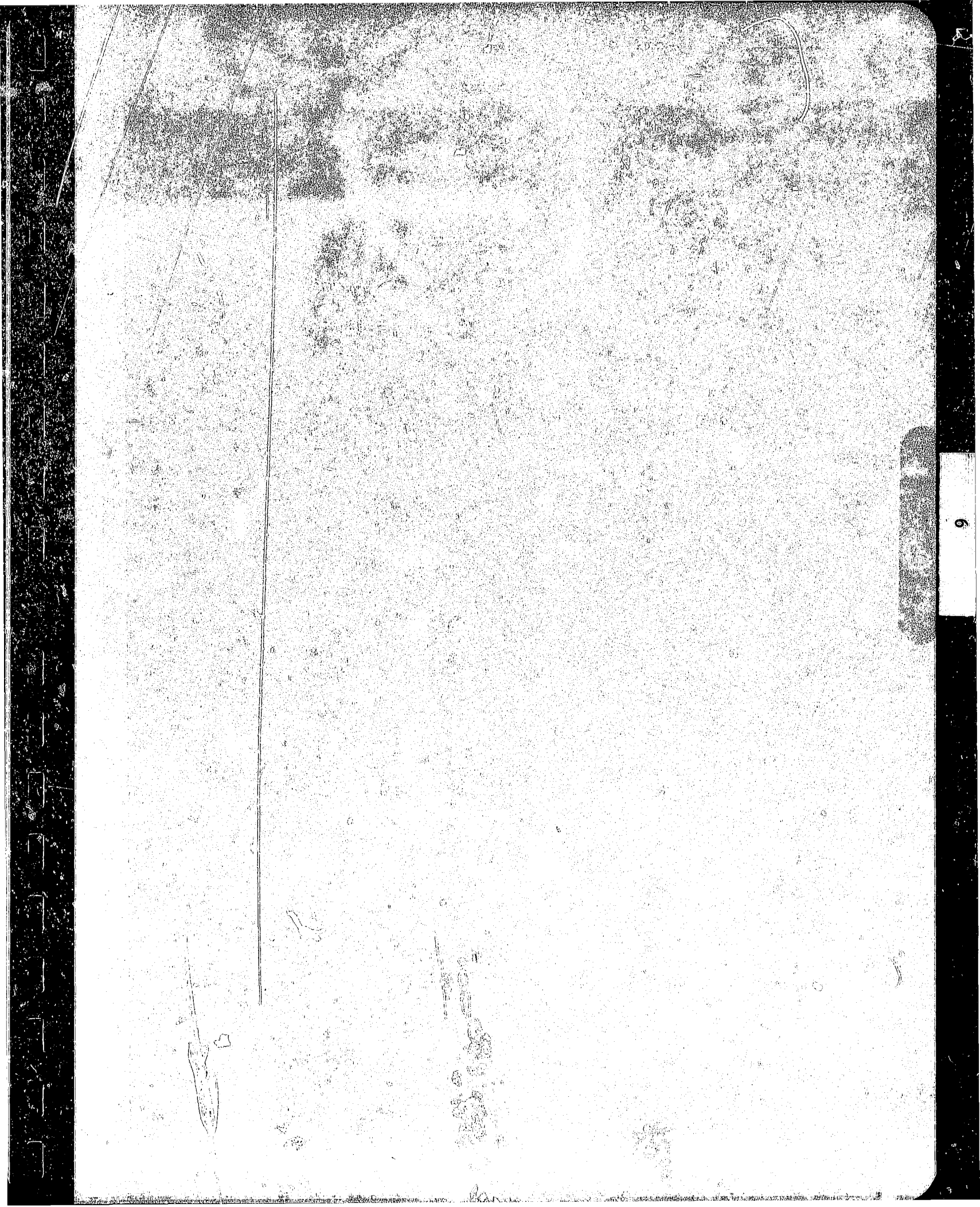
Legend:
- TIER 3 UNEQ ENR
- TIER 2 (CY)
- TIER 1 (FSP)
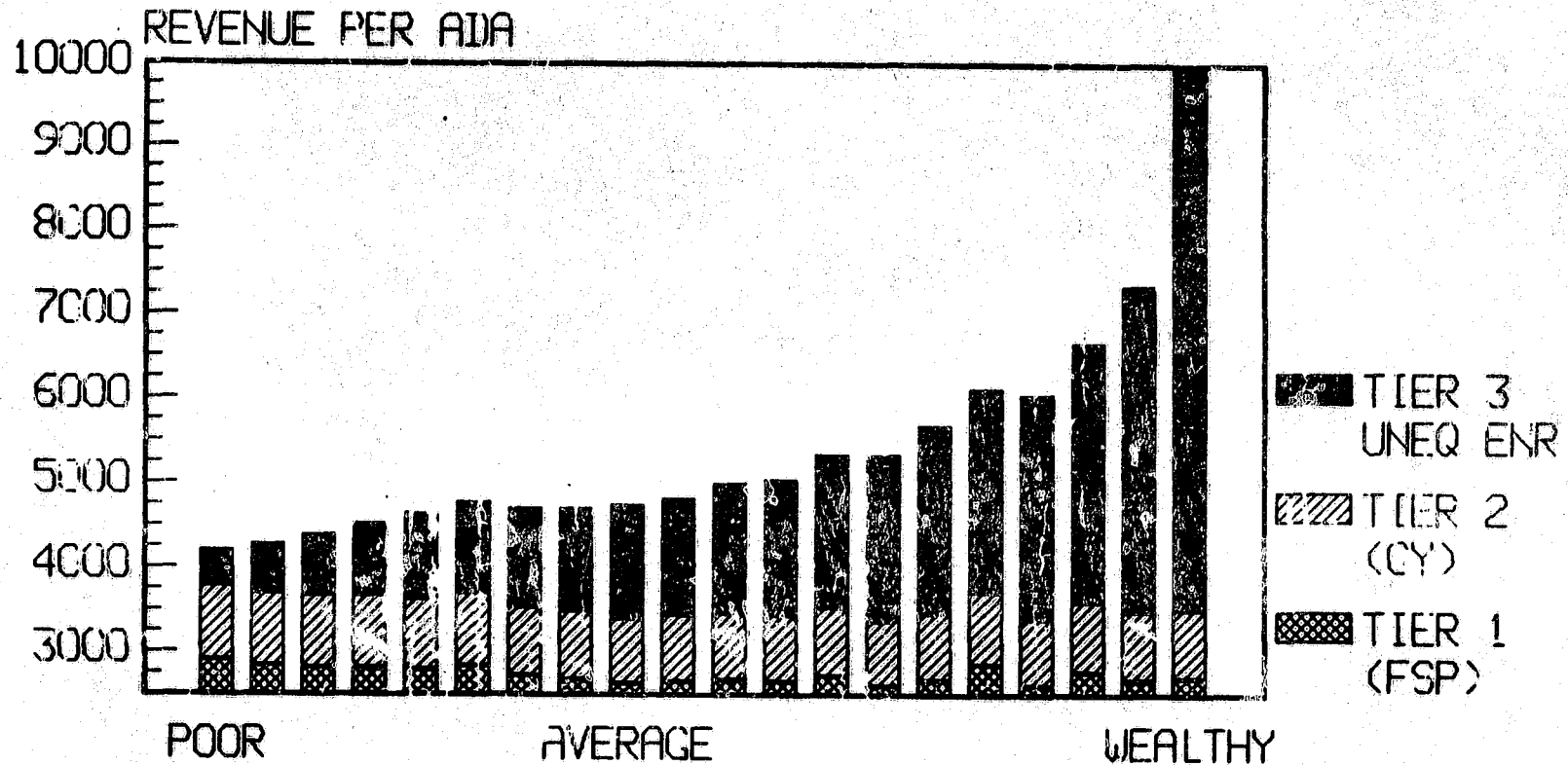
WEALTH GROUPS
(EACH GROUP CONTAINS 5% OF STATE ADA)

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	TIER 1	TIER 2	TIER 3		
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3		2811	867	600	
		2784	861	732
		2785	864	871
5		2766	848	1007
6		2800	864	1097
		2684	824	1183
8		2647	813	1236
9 AVERAGE		2593	787	1360
		2620	802	1389
11		2642	807	1549
12		2626	804	1611
		2695	821	1826
		2577	787	1974
15		2645	811	2215

16	2832	860	2416		
17	2585	786	2673
18	2739	834	3085
19	2653	818	3871
20 WEALTHY	2663	820	7804
21			
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Data for

1990-91 Three Tier Graphic

@ 5/20

The Uribe - Luna Plan
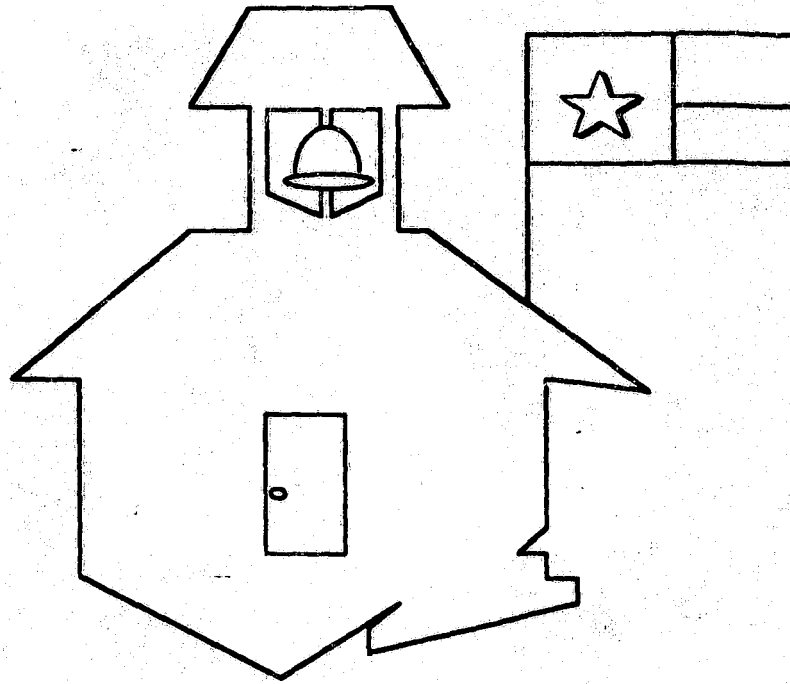
A Solution to <u>Edgewood v. Kirby</u>

Senator Hector Uribe (S.B. 9)
Representative Gregory Luna (H.B. 34)

On October 2, 1989 The Texas Supreme Court declared the Texas system of financing public schools unconstitutional because of great differences in money available to educate children in rich and poor school districts. The Court said every child in Texas should have "access to substantially equal educational opportunities."

The Uribe - Luna Plan provides every child in Texas access to equal revenues by making important changes in the way public schools are funded.

Highlights of The Uribe - Luna Plan

* *Uses concept of tax-base sharing to achieve greater equity and efficiency in tax bases*

* *Creates a two-tier funding system like the present system, with the Foundation School Program on the bottom and guaranteed yield on top*

* *Property-tax base of the whole county is used as the measure of property wealth to determine State aid; poor counties will receive more State aid than wealthy counties*

* *Allows local enrichment up to 20¢ above the county level; every district is guaranteed the same revenue per pupil for the same tax rate*

* *Money is distributed on the basis of weighted students to compensate for special needs*

* *The plan is equitable because the total system gives every district the same revenue for the same tax effort*

* *Maintains local control*

* *Promotes the common interest of rich and poor districts to improve the level of educational funding*

How Does The Plan Work?

The Uribe - Luna Plan uses a two tier (level) approach.

The top tier allows individual districts to raise additional enrichment revenues based on extra individual district tax effort.

The bottom tier (Foundation Program) uses the property tax bases of whole counties as the measure of property wealth which is used to determine state aid. This concept is called tax base sharing.

TWO TIER EQUALIZED SCHOOL FINANCE SYSTEM

$1

Tax Rate

STATE

LOCAL

DISTRICT GUARANTEED YIELD

80¢

Tax Rate

STATE SHARE FSP

LOCAL SHARE FSP

COUNTY BASED FOUNDATION SCHOOL PROGRAM

0¢

Poor District

Rich District